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ABSTRACT

An introduction to criminal law, processes, and justice is provided in this high school level text. Content is divided into six chapters, each treating a particular aspect of criminal procedure and the social and political issues surrounding it. Chapter 1 considers the criminal, the effects of crime on its victims, and legislation to aid victims. Chapter 2 focuses on the police, the laws regulating them, and the public reaction to them. The entire process involved in a criminal court case is detailed in chapter 3, from arrest, bail, and initial hearing to trial procedure and verdict. Sentencing and correction facilities are discussed in chapter 4. Chapter 5 provides an overview of the juvenile justice system, examining the problems of delinquency and juvenile corrections. The final chapter examines the causes of crime as well as both government- and citizen-generated responses to the problem. In each chapter, a brief introductory example precedes a selection of readings, case studies, student simulations, discussion guides and exercises. The text concludes with a section of answer keys to chapter exercises. (LP)

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# CRIMINAL JUSTICE IN AMERICA

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## Preface

No matter who you are, crime has an impact on your life. As a student, your school might be vandalized or your locker broken into. Statistically, chances are very good that sometime in your life you will be a victim of crime in one of its many forms. As a future taxpayer, you will be forced to contribute money in the fight against crime or to repair the damage it does. As a voter, you will be asked to choose candidates based in part, at least, on their views about solutions to crime. Everyone agrees that crime is a serious problem. Few agree about its causes or solutions.

Although the debate over the causes and solutions to crime will probably never end, society has evolved methods and systems for dealing with the problem of crime on a daily basis. Essential to an understanding of Criminal Justice are two areas of jurisprudence. These are called *criminal law* and *criminal procedure.*

### Criminal Law

The focus of *criminal law* is defining crime itself. That is, for what conduct or behavior does our society punish people? After all, if society had no standards for human behavior, we would not have any crime, let alone a crime problem.

Today, our criminal law is contained in a wide array of statutes and ordinances enacted by federal, state, county and municipal government. Each law must clearly spell out the ingredients of the crime in question and the punishment which will befall those who break it.

The process of defining and applying criminal law never stops. Legislatures repeal out-of-date laws, modify existing laws, and enact new ones. Criminal trial courts must interpret the meaning of various laws and apply them to a particular factual case. Criminal appeal courts check the decisions of the trial courts and set precedents for other trial courts to follow. In this way the body of criminal law keeps changing.

### Criminal Procedure

Once the police or other law enforcement group begins focusing on the commission of a particular crime, *criminal procedure* comes into play. It is concerned with the steps taken and decisions made in the investigation, accusation, trial, verdict and sentencing of a criminal defendant. It is the process by which we decide the what, when, where, how and who questions of criminal justice.

Criminal procedures are also designed to protect a defendant from being falsely accused or convicted of a crime. The Constitution of the United States requires "due process of law," safety from "unreasonable search and seizures," and forbids "cruel and unusual punishment." These, and many other Constitutional provisions, have done much to form and shape our criminal procedure.

Other factors also come to bear. Rules of court attempt to assure an orderly and consistent decision-making process. Rules of evidence are designed to ensure that the facts of the case are relevant, accurate and not overly prejudicial. There are also rules of conduct of judges, lawyers and juries.

Like criminal law, criminal procedure is ever changing. Legislators enact new laws, judges and courts adopt new rules, and the Supreme Court interprets and applies the Constitution.

### Criminal Justice

As you will have guessed by now, this book will have a lot to do with criminal law and procedure. They are important parts of criminal justice. Yet, there is much, much more to consider. Criminal justice also involves people, institutions and important societal issues. Perhaps even more importantly, it raises vital questions in each of us about fairness, security and rights in a free society.

As you read and study the selections in this book you will meet the people who investigate crime and enforce our laws. You will learn about the role of judges and courts and their struggle to protect individual rights and determine guilt or innocence at the same time. You will see the darker side of the criminal justice system, and find out how society deals with people after they have been found guilty "beyond a reasonable doubt." You will visit prisons and prisoners, guards and parole officers, and in doing so discover the problems they face on a daily basis.

Beyond criminal law and procedure and the system which investigates, apprehends and punishes law breakers, you will study crime itself. Social scientists who take this role are called *criminologists.* They try to find answers to some very difficult questions. Why do people become criminals? How serious is our crime problem? How can crime be reduced? Although you won't be a professional criminologist after studying this material, you will have a much better understanding about some of the important issues of criminal justice.

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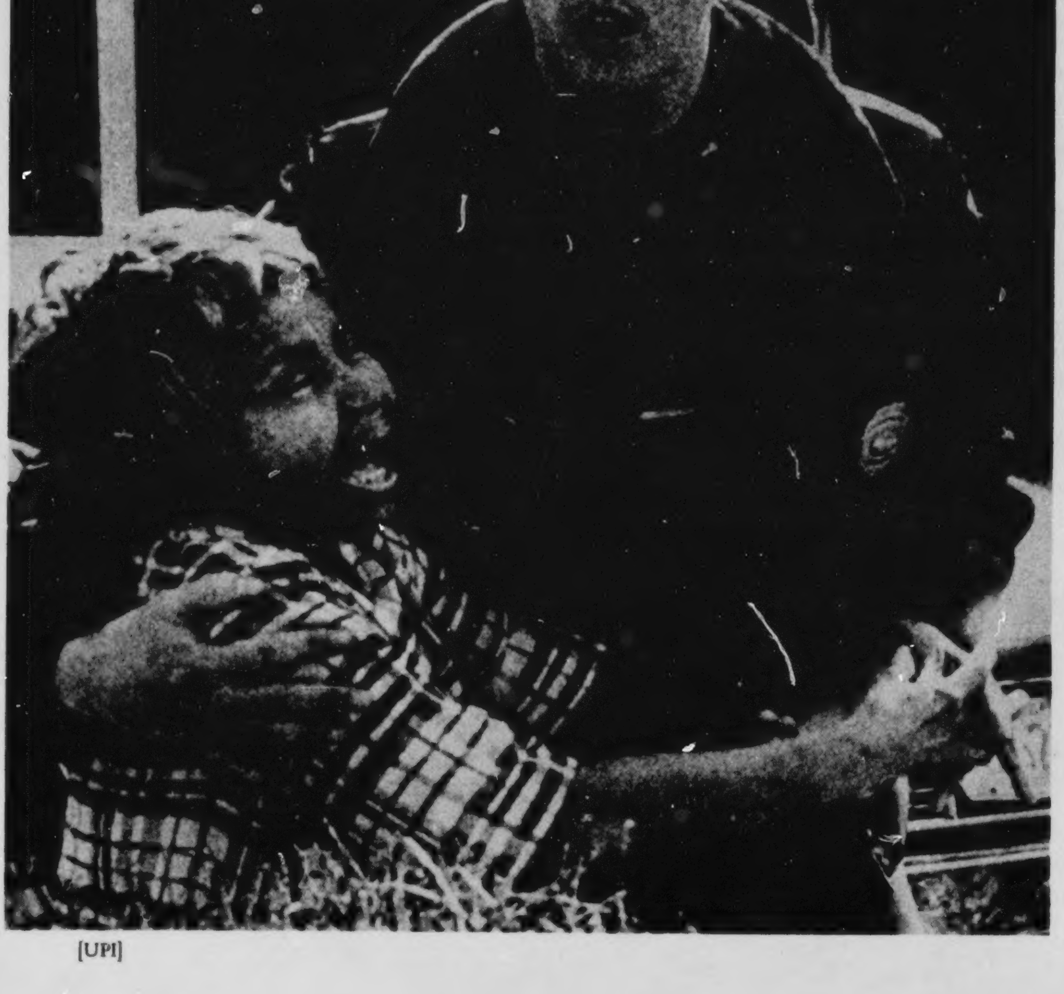


[UPI]

# Crime

Friday evening, 9:30 PM....

In an underground parking structure downtown, a young woman staggers into a phone booth and raises a shaky finger to the dial. A few seconds later, a voice comes on the line...

"Metro police," says the voice.

"Hello. My name is Elena Robertson," stammers the woman. "I've just been robbed."

Meanwhile, in a middle-income residential area, a blue sedan pulls over to the curb in front of a darkened house. Two men get out of the car and casually walk across the wet lawn. Suddenly, one pulls a brick from under his coat and smashes the windowpane in the front door; both men enter the house. Soon they come out: one carrying a stereo receiver, the other a television set. Within seconds, they are gone.

Far too many crimes are committed in our society. Behind each are people: victims who are damaged by crime, criminals who prey on society, and those who must deal with the aftermath – the police, social workers, attorneys, judges and legislators.

In this chapter, we will examine crime in terms of victims, criminals and society. What is it like to be a victim of rape, burglary or theft? Who are the criminals and why do they do what they do? How does society through its laws define crime? What elements must be present before a person is convicted of a crime? Crime itself will probably never go away, but by considering these questions, you will better understand it.

## ■ Who Are the Victims?

Suzanne Marie Rossetti, 26, was returning home from attending the theater at Arizona State University in Phoenix. She drove into the parking lot of a grocery store, and mistakenly locked her keys inside her car. Two young men helpfully got her door open, and then asked her for a lift. Once underway, however, the young men forced Suzanne to drive them to her apartment. The men beat and raped her there for several hours. Finally, they drove her 50 miles into the desert and threw her off a cliff. When her attackers heard Suzanne moaning on the rocks below, they went down to where she lay. She pleaded with them to leave her alone. "I'm dying anyway," she told them. "Damn right you are," replied one of her tormentors. He then picked up a rock and crushed her skull.

In Los Angeles, Sarai Ribicoff, the 23 year-old niece of a U.S. Senator, was leaving a restaurant with a male friend. Two young men stopped them and demanded money. Sarai's friend handed over his wallet to the robbers. But they opened fire with their guns anyway, killing Sarai.

Dr. Michael Halberstam, 48, a well-known Washington, D.C. heart doctor and writer, came upon a young burglar in his home one night. The burglar shot him five times. Halberstam later died on the operating table.

Keisha Jackson, 13, was walking down the street with friends after enjoying herself at a Detroit roller rink. As Keisha and her friends walked by, a 16-year-old boy pulled a gun and fired into the group. Keisha was hit in the head. She died a few days later. Her teenaged killer could give the police no reason for what he did.

No one seems safe from crime today. In recent years, we have been deluged with shocking accounts of random and violent crimes. Reported property crimes such as larceny (stealing) and arson have increased dramatically as well. Not surprisingly, the American public has become more and more concerned about the crime rate and the effectiveness of the criminal justice system.

While the causes of and possible solutions to the crime problem are major points of inquiry, a great deal of attention is currently being focused on the *victims* of crime. Who are they and what role do they play in our legal system? What can be done to better protect and assist crime victims?

According to various victimization studies, an unmarried black male teenager from a low-income family is more likely to become a victim of some violent crime than any other type of American. On the other hand, the victimization studies show that an unmarried white male teenager from a low-income family is the typical victim of some form of larceny. The studies also show that there is relatively little crossing of racial lines as far as crime victimization is concerned. Criminals tend to victimize members of their own race.

While these and other statistical profiles help to identify what types of people crime victims are likely to be, they give little insight into what it's like to be victimized. Being a victim of any crime can be very upsetting, but certain crimes, by their very nature, have more emotional impact on victims than others.

Although murder, rape and robbery are relatively infrequent crimes, they all provoke a great amount of anxiety and fear in people. When an individual or his/her family becomes victimized by one of these violent criminal acts, the personal consequences can be devastating. Crimes against property like theft and larceny are the most common crimes in the U.S., but may have less impact on the victim than crimes of violence. Still, some forms of larceny, such as fraud, can wipe out a victim's entire life savings.

Unfortunately, the plight and suffering of crime victims is often obscured by stark newspaper reporting or dry statistics. Let the victims themselves describe the effect crime has had on their lives . . .

### The Rape Victim

Rape is one of the fastest-growing violent crimes in the nation. FBI statistics indicate 81,540 cases of forcible rape in 1981, a rise of almost 30% from 1977 and an incredible 74% increase since 1972.

According to victimization studies, places where women are easily isolated, such as the street, the home and the car, are high risk places for rape to occur. Rape victims are of the same economic class and race as their attackers in at least 75% of the cases. Also, the rape victim is likely to be approximately the same age as her attacker. In nearly half of all rape cases, the rapists are known by their victims. Some are boyfriends; others are neighbors or even relatives.

While women of every age, class and race have been victimized by rape, the most likely rape victim is a black teenager from a low-income family living in a large city.

What is it like to be a rape victim? And why do rape victims all too often fail to report rape attacks to the police? The following statement was made by a rape victim in an interview. (The name "Brenda" has been substituted for her real name.)

**Brenda's Story**

I was in a strange town—a resort town—and the town was new to me. I didn't know my way around. My friends and I were there for the weekend. We were out drinking, going from bar to bar and having a good time. My friends got tired and went home to bed and I stayed out with a friend of a friend who lived in that town. I didn't know him that well, but I knew him. We went to a party, to another bar, and out to another party, and finally they said, "Let's go over to our house," and I said, "Okay." By that time our party included me, two guys, and a girl.

When we got to their house, the other couple went into another room and I went to the kitchen and poured myself a drink. I turned around and one of the guys was naked. I thought, "Oh no," and laughed; it was silly. I was thinking, "What is this?" I didn't know this guy very well at all. But all of a sudden I saw the look in his eye and I realized it wasn't funny. Then he came over and grabbed me.

At that point he was between me and the door. I started walking towards the door. He grabbed me by the arm, threw me down. He ripped my clothes off. I was screaming, and I couldn't figure out why the people in the next room didn't do anything. He slapped me around a little bit. I finally shut up to a whimper. At any rate, I just lay there and let him do what he would do. I was sure that I was screaming, and that nobody was responding. It wasn't doing any good. As far as I knew he could kill me. He did his thing and then went to the bathroom or somewhere.

As soon as I realized I was alone I jumped up, threw on my clothes and ran outside. I didn't know where I was, but the house was not in town. It was very dark; there wasn't a moon out that night. I just remember running, running, running and crying. I didn't know if he was after me, if he had followed me. I didn't know which direction in relation to where I was going.

It was about four in the morning and I kept running until I saw a light. There was an apartment complex, with an underground garage, and some guy was standing out there by his car doing something. I came up to within six feet of him. I wasn't going to come any closer to any man. At that point, I was hysterical, I was sobbing. I couldn't get out what I wanted to say, you know, "I'm lost." He said, "Where are you staying?" and I got it out between sobs. He didn't try to come close to me or anything, but did give me directions. I took off and ran all the way.

I was staying at a boarding house with a friend. I got in there and stayed awake until the sun came up. When she woke up, I talked to her. She helped me work it out.

I wasn't a virgin, but just because I'm in someone else's house with a man present, I don't feel that gives anybody the right to violate my body. I don't think it matters where you are. I don't think it matters if you are a woman and you are out at two in the morning. I think it is a problem in society that women are so restricted to where they can't go out at two in the morning, to where they can't invite a man into their house, without the courts and police assuming then that they want to be raped. A lot of men can't relate to this. I think it is because they have never been raped. I think if they really want to understand rape from a woman's perspective they ought to think about being grabbed by a guy, or a couple of guys, and have a broom rammed up their tail. Let them think about that for a while and maybe they can relate.

I didn't consider reporting it to the police because I knew my chances were nil of getting any action. I was in a strange house, and I was there by my own will. Now, believe it or not, any court in the land is going to interpret that as an open invitation to be raped. That's the problem. You can go out with somebody on a first date, and invite him in, and he rapes you. You're not going to get him convicted of rape. Nobody is going to believe you didn't consent to it. And there is always this myth, "She wanted to be raped." Men are taught no matter what a woman says, deep down inside she really wants it.

The way I feel about that particular person that raped me? I feel sorry for him, and I feel sorry for all the other men who have suffered because society is two-faced. They teach men how to fight, to be tough, to be strong, to be violent. Whereas they teach women to be docile and quiet and gentle. I think that is something else that has to change. Women have to learn how to fight. Men have quite a few extremely vulnerable points, one in particular that makes them powerless against any woman—I don't care what size she is. Women have to enroll in self-defense classes; they have to learn that they are strong.

I don't go out of my way to be in places where it is late at night and there is no one around: if you scream for help, there is no one around to help you. Certain areas or certain cities have higher crime rates and rape right along with them. I have a job. I get out between eleven, or one or two in the morning, and I come home. What I do when I am in a vulnerable situation and am aware of it, is I expect danger. i expect to be mugged, expect to be raped, expect someone to jump out of the bushes, and I am ready for them.

I think young people should be aware of the statistics so that they realize rape is a serious crime and that it happens way too often and that it is growing way too fast. I think they ought to be made aware of the victim's emotional state after the rape. I think they ought to be made aware of the rapist himself, and of the fact that the rapist isn't some weirdo out there that you never see. He can be your next door neighbor, and you never suspect. I wish every high school student could sit through the whole thing from beginning to end: the physical examination, the police interview, the trial. I think maybe it would take that to make men and women aware of what rape is, how bad it really is, and how often it is happening—and what the chances are of your mother, your sister or grandmother being raped.

### *For Discussion*

1. If you were Brenda, would you have reported the rape to the police? Why or why not?
2. In Madison, Wisconsin, a few years ago, a trial judge suspended the sentence of a high school student who raped a girl at school. The judge gave as his reasons for the suspended sentence the fact that the girl had been wearing provocative clothing, and that young men are constantly being influenced by the loose morals of the times. Do you agree with the judge's reasons? Why or why not?
3. More recently, an appeals court judge in Los Angeles dismissed the conviction of a man who picked up a female hitchhiker in his camper and later raped her. Although the case was dismissed on technical grounds, the appeals court judge wrote in his ruling: "The lone female hitchhiker in the absence of an emergency situation, as a practical matter, advises all who pass by that she is willing to enter the vehicle with anyone who stops and in so doing advertises that she has less concern for the consequences than the average female." Do you think lone female hitchhikers are, in effect, asking to be raped? Should men who pick up and rape lone female hitchhikers be prosecuted?
4. There are many rape crisis centers around the country today. Also, many police departments have specially trained officers or entire units to deal with rape victims and investigations. Invite a representative from a local rape crisis center or your local police department to discuss with the class how rape victims are treated and what special services are available in your community.

### The Larceny/Theft Victim

Larceny is the most frequently committed crime in America today. Estimated at over 7.1 million offenses in 1981, it comprised 54% of *all* crimes and 60% of all property crimes. The loss to larceny victims nationwide has been calculated at approximately 2.4 billion dollars. However, this figure is considered to be on the low side, because many offenses, especially where the value of the stolen goods is small, never come to the attention of police.

Look at the "Larceny Analysis, 1981" diagram.

- Which of the categories of goods listed on the diagram do you think juveniles are most likely to have had a part in stealing? Why?
- Have you or someone you know ever had an item from one of the listed groups stolen? If so, was the larceny reported to the police? Why or why not?

### Matt's Story

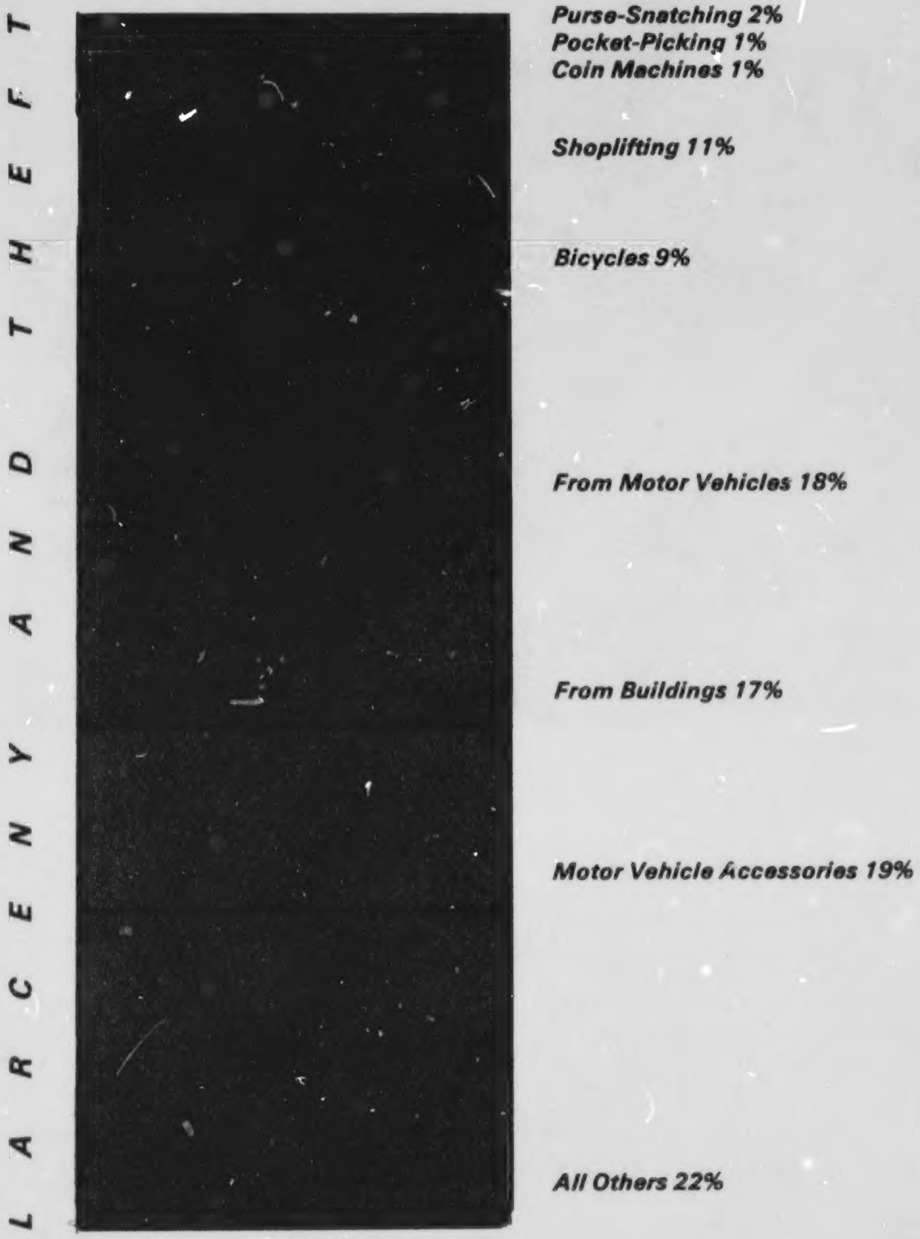
Driving down to the tennis club *in my new car,* I was feeling good. The only disppointment I could foresee was possibly losing the tournament I would be playing in. Unfortunately, that didn't turn out to be the case.

I had really been enjoying my car. It was a brand new sports model, something I could finally afford to buy for myself after supporting my children all these years. When I arrived at the tennis courts in the middle of a Friday afternoon, I parked the car on the street just outside of the club building. As usual, I took the cassette tape out of the player and locked it in the glove box. I also rolled up the windows and locked all the doors. No use taking chances.

The tournament lasted about four hours; I lost in the second round. Before leaving, I called my wife to tell her how I had done and that I would be home soon. I was still feeling really good. Then I went out to my car.

At first, what had happened didn't register. I saw shattered glass everywhere. It took awhile, but then I realized that the rear window of *my* new car was broken. Someone had smashed the back window with a brick or a pipe, then reached in and unlocked the door. They'd

## Larceny Analysis 1981



Foreword, *Uniform Crime Reports*, Crime in the United States, FBI, August 1982, p. 28.

Pickpockets working together steal their victim's money. [UPI]

pulled out all of the paneling on and around the dashboard to rip out my stereo and tape player. Wires were sticking up everywhere.

I guess I was still in a daze when I called the police. They were there in a few minutes and took my report. They told me that what happened wasn't unusual. It happened all the time in that neighborhood of Chicago. They also mentioned it was very unlikely that the thieves would be caught or that I would get my stereo back.

I rented a car for about a week until mine was fixed. I filed a claim with my insurance company to cover the cost of the repairs, so I got back all but $100 (the deductible) of the repair costs. But, my warranty did not cover the theft of car accessories, so I had to pay several hundred dollars for a new stereo set. In addition, my insurance company notified me that my rates will go up almost $400 next year, since I made a claim for reimbursement.

Still, it's not the money or the inconvenience that I hate so much, it's the feeling of helplessness. You do everything you can to protect yourself and your property, but if someone wants to hurt you or steal from you, it doesn't matter. They have all the control, and that's frustrating.

### *For Discussion*

1. Have you ever owned anything that was stolen? If so, what was its effect on you? Do you worry that it may happen again?
2. Many victims of theft and burglary often describe the crimes as an invasion of their privacy. What do you think they mean by this?

## Helping Victims of Crime

As the crime rate climbed steadily in the 1960's and 70's, so did concern about how crime victims are treated in our society. Fred E. Inbau, a noted criminal law scholar, summed up the plight of crime victims like this:

> "The victim of a crime, particularly a violent crime, is traumatized enough by the experience itself, whether it involves bodily injury or loss of money or other property. However, this may only be the start, for then comes the call for the police and subsequent briefings, appearances at police line-ups or viewing the photo albums of suspected offenders; and if someone is charged with the offense, there will be the need for courtroom testimony. The later may entail repeated appearances in court, due, in many instances, to continuance after continuance, most of which may be permitted for unwarranted reasons such as dilatory tactics by counsel.
>
> "If a trial eventually occurs, there will be the ordeal to the victim of a public recitation of the crime, and a vigorous cross-examination by defense counsel. In rape cases, or others involving sexual assault, the courtroom experience is particularly excruciating . . ."

Mirroring this point-of-view is the final report of the *President's Task Force on the Victims of Crime,* released in December 1982. For example, it states:

> Victims who do survive their attack, and are brave enough to come forward, turn to their government expecting it to do what a good government should—protect the innocent. The American criminal justice system is absolutely dependent on these victims to cooperate. Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable. When victims come forward to perform this vital service, however, they find little protection. They discover instead that they will be treated as appendages of a system appallingly out of balance. They learn that somewhere along the way the system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.*

The Task Force went on to recommend that legislation be proposed and enacted to ensure that the criminal justice system pay greater attention to the plight and need of victims. Here is a sample of the recommendations:

- Addresses of victims and witnesses should not be made public or given to the defense without a clear need as determined by the court;
- Statements made by victims during post-crime counseling sessions should not be used in court or made available to the defense;
- Hearsay testimony of victims should be allowed in preliminary hearings so that victims need not attend;
- Bail requirements for release of defendants should be more restrictive;
- The exclusionary rule should be abolished as it applies to Fourth Amendment issues;
- Parole should be abolished or parole release hearings should be opened to the public;
- Judges should have less discretion in sentencing;
- School officials should be criminally liable for failure to report violent offenses against students or teachers or the possession of weapons or narcotics on school grounds to the police;
- Programs to help crime victims employed by the government to readjust to their jobs should be established.

Do you agree with Professor Inbau and the President's Task Force that too much consideration is given to the rights of criminals and there is not enough concern or support for victims? Do you agree with the Task Force Recommendations? In recent years, the federal and many state legislatures have tried to address the problem by enacting laws designed to help the victims of crime.

### Recent Federal Legislation

As a result of the interest expressed by citizens and criminal justice experts alike, Congress enacted the Victim and Witness Protection Act of 1982.** The Act is designed to do three things: (1) enhance and protect the role of crime victims and witnesses in the criminal justice system; (2) ensure that in federal cases the government does all that it can to help victims and witnesses without infringing on the defendant's constitutional rights; and (3) serve as a model for legislation for state and local governments.

Here are some of the main features of the *Victim and Witness Protection Act:*

- *Presentence Statements:* The new law requires that a statement describing the crime's impact on the victim(s) be included in all presentence reports. These are used in deciding appropriate criminal penalties for lawbreakers.
- *Harsher Criminal Penalties:* Persons who

"tamper with" or retaliate against victims or witnesses in federal cases can be punished by harsher fines and/or prison sentences.

- *Civil Court Orders:* These orders temporarily restrain persons who harass victims or witnesses and can be obtained without prior notice to the opposing party in the case.
- *Restitution:* The victim or his or her family is entitled to restitution from the convicted criminal. It may include:
  - the return or replacement of property;
  - money for all medical and related services for a victim's physical or psychiatric care;
  - money for a victim's funeral expenses; and/or
  - services to a person or organization named by the court or the victim (if the victim or his/her family consents to this).
- *A Report to the Congress:* The Attorney General is required to report by October 1983 as to whether any other laws should be passed to stop federal felons from profiting from their crimes by selling their thoughts or feelings about the crime before their victims receive restitution. For example, a criminal who makes money for writing a book or magazine article may be forced to contribute any profits earned for restitution of the victim.

### Restitution and Compensation Under State Law

As mentioned, "restitution" refers to a criminal's *restoring* the victim and/or the community to the approximate position they were in before the crime was committed by paying money or performing some service. As in the new federal law, most states allow criminal court judges to include an order of restitution in their sentences. Typically, restitution is ordered in cases of non-violent crimes as part of the criminal's sentence or as a condition of probation.

The concept of *"compensation"* to victims of crime is much older, dating as far back as 2380 B.C. and the Code of Hammurabi. Under the doctrine of "compensation" it is the state that pays money to the victim to help make up for his or her injury. Modern-day crime victims compensation programs were first established in New Zealand in 1963 and Great Britain in 1964. Currently, there are over 30 states with some form of crime victim compensation statute. (Payments under these statutes range from $5,000 to $45,000 and are made to a victim by the government.)

Victim compensation legislation is based on several theories, one of which is sometimes called "the social welfare theory." It is based on the idea that as our society provides help for the disabled veteran, the unemployed, the sick and the aged, so should public assistance be provided to those who suffer as victims of crime.

The main value of victim compensation laws is that they provide crime victims with some financial aid, and this is important because even if a judge orders a criminal to pay the victim restitution or the victim sues the criminal for damages in a civil lawsuit, the criminal has little or no money and will not be able to pay. State compensation laws protect victims from additional hardship because of so-called "judgement-proof" criminals.

### One State's Model

- A young elementary school teacher was kidnapped from a restaurant, raped, shot six times and left in the street. After spending six months in the county hospital, she finally recovered. Her medical insurance paid for the extensive hospital bills, and the state gave her $2,800 to make up for the lost wages and the cost of job re-training.
- A witness waiting at the scene of a traffic accident to give information to the police was hit and pinned against a nearby building when a drunk driver smashed into him. Because his legs were crushed, he lost his $17,000-a-year job as an electrician. The state awarded him, his wife and his children $5,000 each.

In both of these examples, innocent victims of violent crime qualified for reimbursement under California's Victim Idemnification Program. Since 1965, the State of California has offered monetary aid to families who have suffered severe financial hardship as a result of violent crime. Since 1967, this program has been administered by the State Board of Control, a three-member panel that is also responsible for settling claims against the State of California. Under the program, eligible victims and/or their dependents can receive up to $20,000 in funds (up to $10,000 for medical costs and up to $10,000 for lost wages).

The State Board of Control, under the California Plan, only makes awards in "crimes of violence" such as assault, robbery, rape, murder and hit-and-run, where a medical, burial or loss of support occurred. The Board does *not* award money to persons who have lost personal property, only to those who have suffered bodily injury or death. The Board only awards money for losses and expenses that have *not* already been paid by insurance, and only when "serious financial hardship" is shown.

Another requirement is that the victim cooperate with the police and prosecution at all times in regard to the incident upon which the claim is based. In addition, the Board checks to make sure that the victim did not contribute to the incident in some important way. This is particularly important in cases in which drugs and alcohol are involved.

Before making awards, then, the State Board of Control checks to make sure (1) a violent crime occurred resulting in an injury; (2) the victim suffered a serious financial hardship; (3) the victim cooperated with authorities; and (4) the victim did not initiate the crime.

Application for aid under the California plan may be filed by either the victim of a violent crime or his/her dependents. In a case in which a victim has died as a result of a violent crime, the person who assumed responsibility for medical and burial costs may apply. The claim must be filed within one year of the incident. Only those who are legal residents of the State of California at the time of the crime-related injury may qualify for aid.

The main problem with this and other victim compensation programs is money. Most states operate under compensation boards, and many are behind in the settlement of victim claims due to lack of funds. Many programs are surviving financially because victims do not know about them. With increased public awareness of the programs, more funds will be needed in order for them to work.

### Other Victim Programs

In addition to laws that assist crime victims, many government agencies and private organizations also can provide a variety of *social services*. In many cities, for example, the police department, prosecutor's office and/or private "help organizations" have units to aid victims when they first come into contact with the criminal justice system—that is, at the "intake" stage. At this point, the services are aimed mostly at making the victim feel like a human being, not like a mere witness in some future criminal proceeding. This may involve just giving the victim some individual attention, explaining the criminal court process to him or her, notifying the victim of upcoming court dates, or assisting the victim in finding transportation to court. (Note that under the federal Victim and Witness Protection Act, guidelines for fair treatment of victims and witnesses in the criminal justice system are to be established by the Attorney General. The suggestions for these guidelines follow along the same lines as the social services described above.)

In addition, most communities have programs in which crime victims may receive free or low-cost legal, psychological or vocational counseling. Victims also find help in replacing needed items (such as lost or stolen identification, broken eyeglasses, locks on doors) or in contacting employers or creditors.

### *For Discussion*

1. Reread Professor Inbau's statement on page 13. Make a list of the problems that crime victims face. Can you think of other problems they may encounter that he does not mention? Add them to the list.
2. Watch your daily newspaper for articles about crime and its victims. Clip several of these stories and decide if they support or refute Inbau's view of what crime victims experience. Be prepared to share your examples and discuss your findings in class.
3. Reread the list of recommendations proposed by the President's Task Force on page 13. Which do you agree with? Which would you oppose? Why?
4. Which features of the federal Victim and Witness Protection Act do you think will be the most effective? Least effective? Why?
5. What provisions, if any, would you add to the federal Victim and Witness Protection Act to aid victims? Describe and explain.
6. What is the main purpose of the California Victim Indemnification Program? How does this differ from the idea of restitution?
7. If you could change California's law or write your state's law regarding compensating victims, what would you do? What would your laws provide?
8. *Local Aid to Victims: A Community Awareness Project*

Check in the Yellow Pages, at your local police department and courthouse, and around your neighborhood for special programs and services that are available to crime victims. Then report on the purposes and operation of these programs to your class and list all that have been identified on the chalkboard. When everyone has described at least one, select the five most important services that other students and people in your area should know about. Next, work in groups of three or four students each to develop posters and/or brochures to display or distribute for making people aware of what can be done for victims of crime in your community.

## A Senate Committee Hearing—Simulation

The last "anti-profit" feature of the Victim and Witness Protection Act as described on pages 13–14 is a fairly new and controversial approach to victim assistance. In this activity, simulate a congressional hearing in which interested parties present their arguments for and against a proposed "anti-profit" statute.

Imagine that the following law was proposed:

> "Any party who makes a contract with a convicted felon with respect to the reenactment of his or her crime or the expression of the criminal's thoughts, feelings, opinions or emotions about the crime, by way or movie, book, magazine article, tape recording, phonograph record, radio or television presentation, must pay any money owed under the contract to a special crime victims' compensation fund run by the government."*

A witness testifies about organized crime at a Senate Committee Hearing. [UPI]

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*Lois Haight Herrington, "Statement of Chairman," *President's Task Force on Victims of Crime*, December 1982, p. vi.

**18 U.S.C. 1501 *et. seq.*

*To conduct the simulation, follow these steps:*

1. Form the class into five groups as described below and follow the instructions as provided.

**Group I—*The Senate Committee***

Your group must conduct hearings and, based on its findings, decide whether or not to send the law as proposed to the Senate floor for a full debate. Select a chairperson to help lead your pre-hearing discussions and moderate the hearing.

*To prepare for the hearing:*

a. Lead a group discussion using the following questions.

- What is the purpose of the Victim and Witness Protection Act? (For further information, you might want to consult section 2(a) of 18 U.S.C. 1501, which may be found in United States code volumes in your local law library and in many community libraries.)
- Does the proposed law advance these purposes? Why or why not?

b. Based on these discussions, each member of the Committee should develop 2 or 3 questions to ask the groups presenting testimony before the Committee.

The remaining groups should develop arguments in favor or against the enactment of the proposed law. Begin by selecting a spokesperson to help lead your group's discussions and respond to any questions the Senators may raise. Then, brainstorm arguments which support your group's point-of-view. Finally, as a group, choose two or three of the best arguments and form them into statements to be presented to the Senate Committee.

### Supporters of the Anti-Profit Law

**Group II—*Victims and their Families***

Develop arguments in favor of the passage of the proposed law from the point-of-view of crime victims and their relatives. *For example:* As a crime victim (or a victim's friend or relative), how might you feel if a criminal received large sums of money and notoriety by publishing information about his or her crime exploits?

**Group III—*Law Enforcement Professionals***

Develop arguments in favor of the passage from the point-of-view of police and prosecuting attorneys. *For example:* How is our system of justice offended by criminals who benefit financially from their crimes?

### Opponents of the Anti-Profit Law

**Group IV—*Publishers and Media Representatives***

Develop arguments against the proposed law from the point-of-view of those who publish books and magazines or produce movies or television shows. *For example:* What impact might such a law have on First Amendment rights?

**Group V—*Attorneys for Criminal Defendants***

Develop arguments against the proposed law from the point-of-view of those representing convicted criminals. *For example:* What impact might such a law have on the First Amendment and economic rights of convicted defendants.

2. *Conducting the Simulation:*

When all three groups have prepared their roles, conduct the congressional hearing. The Senate Committee should be seated facing the class. In order, spokespersons from each group should present their arguments to the Committee. After each presentation, the Senators may ask any questions concerning the views expressed. When the presentations and questioning have been completed, the Senators should vote (by show of hands) on whether to send the bill on to the Senate floor to be discussed further.

3. *Debriefing Questions:*

- If such a law were passed, should a distinction be made between accused and convicted criminals? Why or why not?
- If such a law were passed, should a distinction be made between so-called "white collar" and violent criminals?
- What are some alternative ways of dealing with this problem other than enacting a federal anti-profit statute?
- Based on the arguments presented during the simulation, would you support the enactment of such a law? Why or why not?

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*The proposed law for this simulation is based on New York's unique anti-profit statute (C.L.S. N.Y. STATUTES § 632-a).

## ▶ The State Board of Control/ An Activity

Imagine that you are a member of a State Board of Control similar to the California model. It is your responsibility to review crime victim compensation applications and decide which, if any, should be approved. To conduct this activity:

1. Form small groups of three or four students.
2. Review the criteria ued for making awards pages 14–15.
3. Read each of the cases which follow and decide, based on the criteria, whether compensation should be awarded. Be prepared to discuss and support your recommendations.

### Case No. 1

**Approve** ☐
**Deny** ☐
**Reasons** ____________________
**Amount:**
**Medical** ____________________
**Wage** ____________________
**Other** ____________________
(Funeral or Job Retraining)

William was at the Shady Oak Bar playing a game of pool with the suspect, Ken Johnson. William had a $50 bet on the game. He lost the pool game, and there was an argument on paying the bet. According to witnesses interviewed by the police, William drew back his arm as though he was going to strike Ken. William took a swing at Ken and missed. Ken picked up the pool cue and struck William in the mouth causing him to lose several teeth.

William claims that he did not try to strike Ken and they had no argument.

The District Attorney's office refused to prosecute Ken because of insufficient evidence.

William is claiming $500 in medical damages and $200 in lost wages.

### Case No. 2

**Approve** ☐
**Deny** ☐
**Reasons** ____________________
**Amount:**
**Medical** ____________________
**Wage** ____________________
**Other** ____________________
(Funeral or Job Retraining)

Robert Samuelson, owner of the Valley Drug Store, was shot during a robbery of the store. He died as a result of gunshot wounds to his chest. His widow, Ruth, is claiming a wage loss of $7,600 per year for five years due to her husband's death. Funeral expenses totaled $3,000.

Ruth will receive her husband's estate, which is valued at $30,000. In addition, she receives Social Security benefits of $200 per month.

## Case No. 3

**Approve** ☐
**Deny** ☐
**Reasons** ______________________________
**Amount:**
**Medical** ______________________________
**Wage** ______________________________
**Other** ______________________________
(Funeral or Job Retraining)

Rocky Pineda was playing with his two children at Allstone Park, when he was approached by two young men. One of them had a gun and demanded money. Rocky attempted to explain that he could not speak much English. He tried to take his children and run when one of the young men shot him in the back. He died a few moments later as a result of the gunshot wound. The suspects were never found.

The funeral expenses were $1,500, to be paid by Maria Pineda, his widow. She is 8 months pregnant and has no health insurance to cover her own medical expenses. She is claiming a $10,000 wage loss due to her husband's death.

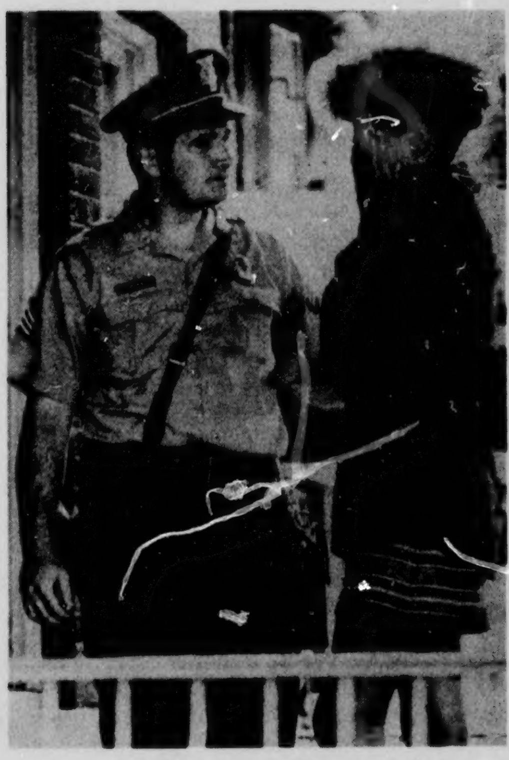
## Case No. 4

**Approve** ☐
**Deny** ☐
**Reasons** ______________________________
**Amount:**
**Medical** ______________________________
**Wage** ______________________________
**Other** ______________________________
(Funeral or Job Retraining)

Susan Jones was sitting in the Whaling Ship Bar with two of her girlfriends. They were listening to music and having a drink. Three men sat down at their table and began to talk. They all began dancing and continued drinking.

One of the men, Mike, offered Susan a ride home. She accepted. When they arrived at her apartment she invited him in for coffee. He followed her into the kitchen, grabbed a knife, and then forcibly raped her and stabbed her several times in the chest.

Her medical insurance covered her hospital bills. She stayed away from work for a week because of the psychological trauma. She is claiming $1,000 for seeing a psychiatrist and $200 in lost wages.



A police officer tries to comfort a victim of crime. [UPI]

## A Look Back...

"What is the world coming to? In my day you could leave your house with all the doors and windows unlocked and when you came back everything would be the same. Now, you can't walk down the street in your own neighborhood without getting robbed or worse."

Have you ever heard an older person express opinions like this? Many people seem to feel that crime and violence have gotten much worse over the last decade or so. Some look back to their own past as a time when streets were safe and crime was a faraway and limited occurrence. Indeed, statistics do seem to indicate that the decades of the 1930s and '40s were less crime ridden than recent times. Yet, those decades may be exceptions to the rule. Lest we begin to feel that crime and violence are strictly new phenomena in the United States, let's take a look back into our history. As you will find, crime has always been a part of American life.

### Why Are We So Violent?

By the year 1700, land was becoming scarce in the English colonies of America. In addition, tax laws were often unfair, and government officials treated the poor harshly. One result of these conditions was a major rise in robbery and other types of crime.

Philadelphia, one of America's first important cities, was known as the "crime capital of the colonies" during the early 1700's. Robbery, rape, murder, and arson occurred with frightening regularity.

During the years before the Revolutionary War, criminals from England's jails, both men and women, were deported to America as indentured servants. Before the Revolution, 50,000 of these lawbreakers were sent to the American colonies. Some ran away once they arrived and became part of the growing criminal population.

By the mid-1700's, New York City had undergone a population explosion with new immigrants arriving by the boatload. Along with the increasing population went a rise in violent crime. A New York newspaper editorial of the time complained about street crime: "It seems to have now become dangerous for the good People of this City to be out late at night without being sufficiently strong or well armed, as several attacks and disturbances have been lately made in our streets." Assault and other violent crimes accounted for an estimated 20% of all crimes in New York City during the 1750's.

Gangs of thieves and robbers preyed on large segments of the population in the countryside. One group of gangs in the North Carolina backwoods provoked the formation of the first American vigilante group in 1767.

### Crime in the Cities

During the 1800's, many American cities grew rapidly. New industries located in the cities attracted American workers from farms and rural areas in the United States as well as immigrants from all over the world. The cities also gained the reputation for being places of uncontrolled criminal violence.

Before the Civil War few cities had anything resembling an organized police force. Like most cities, Boston had a "night watch," but this was mainly concerned with looking out for fires. Watchmen were afraid to enter certain dangerous neighborhoods. Across the country, Los Angeles was still a small town of 8,000 people. Yet, during a 15 month period in the 1850's over 40 murders took place. L.A.'s more sophisticated sister city to the north, San Francisco, was no less violent. Entire neighborhoods existed where "no decent man was in safety to walk the street after dark."

In Philadelphia during the mid-1800's many robbers preyed upon wealthy citizens who often carried large amounts of money because bank checking accounts were little known at the time. In the lower-class slum sections of the city, assaults, especially by juvenile gangs, were commonplace.

A New York City official complained about a crime wave in 1842: "Thronged as our city is, men are robbed in the streets. Thousands that are arrested go unpunished, and the defenseless and the beautiful are ravished in the day time, and no trace of the criminals is found. The man of business, in his lawful calling, at the most public corner of our city, is slaughtered in the sunshine..."

During the decade before the Civil War New York City experienced an explosion in crime. An estimated 3,000 homeless children roamed the streets. Many of them were pickpockets and street robbers. More arrests for murder took place in New York than in London, which had a much larger population. One English traveler wrote: "Probably in no city in the civilized world is life so fearfully insecure."

By the late 1800's New York had a population of one million, over 40% of whom were recent immigrants. People were crammed into tenement slums. The streets were full of garbage. There was much unemployment, and street gangs robbed seemingly at will.

**Gang Violence**

Violent youth gangs in Philadelphia formed in lower class Irish and black neighborhoods starting in the 1840's. These gangs actively looked for victims to attack. Their targets included lone pedestrians, younger children, and ethnic group members who wandered outside their own neighborhoods.

Youths as young as ten years old used clubs, knives, brass knuckles, and pistols to attack their victims. Another favorite weapon was a slung shot. This was a heavy ball of lead with a long cord attached through a hole in its center. This device was hidden in the palm of the hand and used like a blackjack.

Rival gangs in Philadelphia often warred against one another with serious injuries and deaths occurring regularly. Gangs with names like the "Bleeders," "Garroters," "Rangers," "Tormentors," and "Killers" fought on a spot called the "Battle Ground" as men gathered to watch and cheer on their favorites.

In New York, well-organized adult criminal street gangs controlled certain parts of the city. A particularly notorious area was called Five Points which was centered at the intersection of five streets in a slum neighborhood. Composed mainly of young men from Irish immigrant families, gangs called the "Dead Rabbits," "Plug Uglies," and "Shirt Tails" were famous for mugging people. In the nearby Fourth Ward section, the "Daybreak Boys" were responsible for 20 murders between 1850 and 1852. Squads of toughs were recruited from these gangs by political parties to force citizens to vote the "right way" on election day.

Probably the most violent New York street gang at this time was called the "Whyos." The Whyos came from Mulberry Bend, another slum neighborhood. They robbed people and burglarized homes and stores throughout the city. At one time the Whyos had 500 members, all of whom supposedly had killed at least one person. This gang even advertised their "services." A handbill found on a gang member set their rates:

| | |
|---|---|
| *Punching* | $ 2 |
| *Both eyes blacked* | $ 4 |
| *Nose and jaw broke* | $ 10 |
| *Jacked out (black jacked)* | $ 15 |
| *Ear chewed off* | $ 15 |
| *Leg or arm broke* | $ 19 |
| *Shot in leg* | $ 25 |
| *Stab* | $ 25 |
| *Doing the big job (murder)* | $100 |

Dandy Johnny Dolan, a leader of the Whyos, invented a copper eye gouging device that hooked onto his thumb. He was known to have kept one eye as a trophy.

**Feuds and Outlaws in the Countryside**

The big cities were not the only places in the United States where violence threatened the peace. People living in the countryside were also often terrorized by family feuds and outlaws.

After 1870, feuds erupted in the South between families who supported different sides in the Civil War. For example, the famous Hatfield and McCoy feud caused much bloodshed along the Kentucky-West Virginia border between 1873 and 1888. In the Southwest family feuds centered around the use of rangeland. The "Pleasant Valley War" between the Graham (cattle) and Tewksbury (sheep) families raged in Arizona from 1886 to 1892. This feud was fought literally "to the last man."

American outlaws have been glamorized for many years in books, in the movies, and on television. It turns out that most were cheats, cowards, and cold blooded murderers.

**Lynch Mobs**

Lynching was a form of mob violence that ends up with an accused person being punished without the benefit of a trial. Lynching apparently began during the Revolutionary War in Virginia. Col. Charles Lynch encouraged mobs of patriots to beat and whip supporters of the King. After 1850, lynchings underwent a major change as more and more lynch victims were killed, usually by hanging.

In 1871, a white Los Angeles police officer was shot and wounded in a Chinese neighborhood. A white mob gathered and rounded up 20 Chinese who were quickly hanged from street lamps. However, black people were the main victims of lynching after the Civil War. Between 1880 and 1900 about 2,000 blacks were lynched, mostly in the South. White mobs lynched blacks because they were suspected of committing serious crimes like raping a white woman, or for doing little more than attempting to register to vote.

Perhaps the ugliest episode of lynch violence in the United States took place in Omaha, Nebraska, on September 28, 1919. After months of newspaper stories concerning black criminals attacking white people, a young black man, William Brown, was arrested for raping a white girl.

On the afternoon of the arrest, a mob of 1,000 white people gathered in front of the newly constructed courthouse where Brown had been jailed. The mob demanded that the sheriff hand over the young black man. But the sheriff refused. By nightfall, thousands more had joined the courthouse mob. At one point the sheriff ordered the courthouse fire hoses be used to break up the illegal assembly. But this tactic only enraged the mob further. A group of young men broke into the courthouse, set it on fire, and axed the fire hoses. The sheriff led everyone in the courthouse including Brown to the roof of the building where they were shot at by members of the crowd below.

At this point the 60 year-old mayor of Omaha left the courthouse to plead with the angry citizens to disperse. Someone yelled, "If we can't get the nigger, we'll lynch you!" The mayor was then grabbed, a rope was thrown around his neck, and he was strung up on a pole. Miraculously, his life was saved by police officers who managed to get him away in a car.

The mob finally crashed its way into the burning courthouse, climbed the stairs to the roof, and forcibly took William Brown from the sheriff. By the time he had been taken down to the main floor, Brown had been beaten into unconsciousness with every piece of clothing stripped from his body. A noose was put around his neck and as his body was hoisted up a telephone pole it was filled with bullets. After awhile the corpse was taken down and burned. Newspaper photographers took pictures as the lynch mob watched the body burn.

Big and Little Harpe were brothers who robbed and killed throughout Ohio, Kentucky, and Tennessee during the late 1700's. They were known for bashing babies' skulls against trees. While traveling in western Kentucky in 1799 the brothers stopped at the house of a woman whose husband was away. They persuaded the woman to allow them to stay the night. She had already granted overnight hospitality to a surveyor. During the night one of the Harpes smashed the brains of the surveyor with a hatchet. In the morning the Harpe brothers stabbed the woman to death, and slashed her baby's throat. As they left they set the house on fire. While fleeing, the Harpes killed two neighbors who tried to stop them. They were finally caught and shot to death. Their heads were cut off and mounted on a tree to rot. During their violent career, the Harpes murdered between 20 and 38 persons.

Jesse and Frank James fought as Confederate guerillas during the Civil War. Afterward, they turned to train hold-ups and bank robberies in an area ranging from Missouri to Minnesota. They also killed 16 people.

An equally notorious frontier outlaw was William H. Bonney, otherwise known as "Billy The Kid." Born in a slum tenement in New York City in 1859, Bonney supposedly killed his first man at age 12. After the Civil War he roamed the West, gambling and killing. In 1875, he traveled to Lincoln County, New Mexico, where he was hired as a cattle rustler. After killing several lawmen he was tracked down and shot to death in the back by Sheriff Pat Garret, himself a brutal gunman. At the time of his death Bonney was said to have killed 21 men, one for each year of his life.

In his day John Wesley Hardin was somewhat of an outlaw-hero. Today, he would be called a psychopathic murderer. Hardin was born in Texas in 1853. He committed his first murder at age 15. His victim was a black boy who had beaten him at wrestling. Hardin went on to kill a circus performer for $100. In 1871, he killed a deputy sheriff. He murdered over a dozen more men including one because he badmouthed Texas. Hardin was finally shot and killed in 1895.

### Prohibition, Depression, and a New Crime Wave

By 1920, Prohibition was in effect as a result of the Eighteenth Amendment to the Constitution. This meant that the manufacture, sale, and transporting of alcoholic beverages was illegal throughout the United States. With Prohibition came one of this country's most violent crime periods.

In Chicago, a thriving illegal beer-making and distribution business produced millions of dollars for gangsters and the politicians whom they bribed to protect them. All was not peaceful, however, as rival gangs fought over control of the beer business. Between 1923 and 1926 over 200 gangsters died during the Chicago beer wars. By 1927, Al Capone had become the top mobster in Chicago. His beer business took in $60 million a year.

During the early 1930's Charles "Lucky" Luciano formed an alliance of crime organizations that sought to control gambling, prostitution, narcotics, and other illegal money-making activities. Gangster rivalry and greed, however, led to the murder of numerous underworld figures.

As the Great Depression began in the early 1930's, violent crimes reached a peak. In 1933, the murder rate was 9.7 murders for every 100,000 Americans. This high murder rate would not be equalled again until the late 1970's.

A curious thing happened as the Depres-

Two police officers lie dead at the hands of 1930's mobster's at the Kansas City Railroad Depot. [UPI]

sion worsened and unemployment skyrocketed: the crime rate went down. Despite widespread news coverage of Depression era bank robbers like John Dillinger, "Pretty Boy" Floyd, and Bonnie and Clyde, violent crime actually declined. For example, the murder rate dropped 50% between 1933 and the early 1940's. Other serious crimes fell by a third.

Why did crime decrease during a time of great hardship for almost all Americans? According to some historians, the Depression brought Americans closer together since almost all of them were in the same boat. In addition, World War II caused Americans to become even more unified. Furthermore, the birth rate had dropped in the 1920's which meant that the youth population (14-24 year-olds) declined in size. It is young people who contribute most to crime, especially violent crime. Charles Silberman, the author of a 1978 study of violent crime in America, observes that "an entire generation became accustomed to peace in their daily lives."

During the 1960's the crime rate, particularly violent crime, turned around and began to increase. At the same time the 14-24 age group grew rapidly. Many crime experts believe that this surge of young people in the population was largely responsible for the increase of crime in the 1960's and 1970's.

To the older generation, brought up during the Great Depression, the rise of violent crime that started in the 1960's signaled a frightening new trend. But, as Charles Silberman and others have pointed out, violent crime has almost always existed at a high level in American history. According to his view, violent crime is as American as apple pie.

### *For Discussion*

1. Do you agree that "violent crime is as American as apple pie"? Explain your answer.
2. Write a short definition or description of the following: indentured servant, night watch, slung shot, Five Points, Whyos, strike, feud, lynching, Prohibition, underworld, Great Depression.
3. Why did early volunteer fire brigades in the cities often end up fighting one another?
4. Make a list of five different causes of riots in American history.
5. Name one negative and one positive result of the riots that took place in American cities during the 1800's.
6. Why do you think American outlaws like Jesse James and Billy The Kid have so often been portrayed as heroes in books, in the movies, and on television?
7. How do you account for the hatred and viciousness of the mob of normally law-abiding Omaha citizens who lynched William Brown in 1919?
8. Why did the crime rate go down in the 1930's? Why did it go up again in the 1960's?
9. Use an encyclopedia, biography, or history books in the library to research and write a report on one of the following criminals: Jesse James, William H. Bonney, John Wesley Hardin, Al Capone, John Dillinger.

## ▶ Crime Victim Survey/ An Activity

How has crime affected you and the other people who live in *your* community? Are all of us truly victims of crime? The following survey can help you find out what experiences your class and members of your community have had with crime.

*Directions:*

First, each member of the class should complete the following survey. Then, each should ask at least five people from his or her neighborhood to do the same. Summarize and compare the responses you have gathered with those of your classmates.

| | | Yes | No | Explanations |
|---|---|---|---|---|
| 1. | Have you personally ever been a victim of some crime such as bike theft, burglary, assault, etc.? | ☐ | ☐ | |
| 2. | Have any members of your immediate family ever been victims of crime? | ☐ | ☐ | |
| 3. | Have any nearby neighbors ever been victims of crime? | ☐ | ☐ | |
| 4. | Do you feel unsafe alone at night in your own neighborhood? | ☐ | ☐ | |
| 5. | Do you believe a crime problem exists at your school? | ☐ | ☐ | |
| 6. | Have the people in your family been forced to change any part of their lives because of crime? | ☐ | ☐ | |
| 7. | Do you think the police in your community are doing an adequate job of protecting you and other citizens from criminal activity? | ☐ | ☐ | |

**Survey Debriefing**

1. Tally the results of the "Crime Victim Survey." Are there any surprises?

2. Make a list on the chalkboard of the kinds of crimes students, other members of their families, and their neighbors have been victims of. Do people in the community seem to be frequently victimized by one particular crime?

3. Find out how students, their families, and their neighbors attempt to protect themselves from crime (e.g., use of special locks, bars on windows, watchdogs, guns in the home, neighborhood patrols, etc.).

4. If students generally agree that a crime problem exists at school, find out what kinds of crime occur most frequently.

5. Discuss the role of the police in protecting young people and adults from criminal activity. What are the police in your area doing? What should they be doing?

## The Young and the Violent

The majority of violent crimes today are committed by young males under the age of 25. About 60% of all arrests for violent crime fall into this category. In fact, criminals are also almost always males. They account for 84% of all arrests and 90% of violent crime arrests. Statistics show that women are most often arrested for non-violent theft crimes such as larceny and burglary.

One of the most common types of violent criminal today is the street robber. In his 1978 book, *Criminal Violence, Criminal Justice,* Charles Silberman described the typical street robber as a male minority teenager or young adult from a poor family. This type of robber takes money from people impulsively if the opportunity arises. Rarely does he plan a hold-up. Sometimes street robbers steal because they need the money for food or drugs, or to impress someone. At other times, the street robber acts out of boredom. The victims of street robbers are usually weak or vulnerable like an old person walking alone or a drunk who has passed out on a park bench.

Silberman interviewed a number of young street robbers and gained some insight into why they apparently enjoyed stealing from people and threatening them with violence. "I get a kick out of it," said one. Another explained, ". . . if I had a .38 right now, I can make you do just about anything I wanted to do. . . ." Others told Silberman that robbing people with a gun makes them feel like "somebody," like a judge or a king or God. Not all criminals who commit acts of violence think this way, but those who do are especially dangerous. For a few dollars some would maim or kill their victims with little hesitation or feeling. This type of violence is not new in America, but it is becoming more frequent, according to Silberman.

As we mentioned earlier, young people account for a majority of the violent crimes committed in this country. A disturbing characteristic of many young violent offenders is their apparent lack of feelings. For example, three young Miami, Florida, boys covered a tramp with lighter fluid and set him afire. They later told police that what they did was just a "prank." They wanted to see what would happen, they said. Some criminologists believe that young violent criminals have been so brutalized by their own families and surroundings that they cannot feel anything when they maim or kill.

### Youth Gang Violence

Undoubtedly the most worrisome form of violence among youth today in some cities involves the danger of youth street gangs. They are not a new phenomenon. Here is how Frederic M. Thrasher, a sociologist famous for his study of some 1,313 gangs in Chicago in the early 1900's, characterized gang behavior of the past:

> "In the absence of an opportunity for active excitement, the gang resorts to loafing. The loafing gang . . . is almost always 'waiting for something to turn up' and spends its time recounting its adventures, rag-chewing, telling dirty stories, indulging in low horseplay, or annoying passersby. It is likely at any moment to cease its loafing role, however, and embark on some enterprise if opportunity arises."*

The gangs of today, however, are not the same bored but basically harmless boys who "loafed," pitched pennies on the street corner, stole fruit from the local market and engaged in scuffles with members of other gangs.

According to Walter B. Miller, a Harvard Law School criminologist, nearly half the violent street crimes occurring in the large cities of the country are committed by members of youth gangs. Miller says that practically every city with a population over 25,000 has some type of youth gang activity, although serious gang violence is worse in some cities than in others. Philadelphia has recently seen a dramatic reduction in killings by inner-city black youth gangs. On the other hand, Los Angeles is currently in the midst of an upsurge in gang violence.

Youth gangs have always been known for fighting one another, often over control of certain "turf" or territory. Although this pattern still persists, the fighting has become much more violent. "Where in the past, gang fights involved fists, feet, chains, some knives and very few guns," says former L.A. County Sheriff Peter Pitchess, "today's gangs are well armed. Once a death due to gang warfare was rare [but] today hardly a week goes by without one or more deaths occurring due to gang violence." Los Angeles County now leads all metropolitan areas of the country in gang killings. In 1980, there were 351 gang-related murders in the county.

Police sergeant Jim Hargrove, who works in a gang-infested precinct in New York City, believes that defending territory is not so important nowadays. Most street gangs exist to help kids survive, Hargrove says.

In 1979, a young New York City gang member who called himself "Nato" was interviewed by Ianthe Thomas of the Pacific News Service. Nato, who is black, lived with his mother in a South Bronx slum tenement without running water. The toilet consisted of a bucket that was dumped out the window. Nato, like his brothers before him, became involved with gangs at an early age. Now a member of the "Savage Nomads," Nato said street gangs were like families. "Like brothers and sisters all together," he said. He also explained that gangs helped kids to survive. "My mother don't want me in no gang," he said. "But here you have to be. Everybody beat on you if you not a member. Gangs is protection." Nato went on to say that as a gang member he felt he had more respect. "I am somebody," he declared. He said that if a store owner threw him and his friends out to prevent trouble, they would more than likely burn the store down. The store would be gone, but Nato and his gang would still be around. "We still somebody," he told the interviewer. Nato carried a .32 automatic handgun. When asked why he and his gang attacked people and got involved in violence, Nato replied, "You have to show blood. Blood is strength."

"Sambo" is the nickname or *placa* for an 18-year-old member of "El Monte Flores," one of L.A. County's many Latino gangs. Sambo was born in East Los Angeles where all his older brothers were involved in gangs. His gang is located in a suburban area of L.A. County. "Being in a gang means if you get thrown out of the house, you can go to somebody else's," he said. Sambo told a Los Angeles *Times* reporter that defending his friends was the most important thing in gang life, even if it meant going after someone with a gun. Sambo was once arrested for attempted murder, but he was acquitted.

It has been estimated that Los Angeles County now has 300 gangs, mainly in poor black and Latino neighborhoods. Some of the Latino gangs have been around for 75 years or more. In recent years the violence among these gangs has been increasing so much that it now seems to be out of control. Old style gang "rumbles" and "one-on-one" fights have been replaced by small armed raiding parties in automobiles. A typical attack occurs when members of one gang drive by the home of a suspected rival gang member and blast away with shotguns, rifles, or handguns. These "drive-by" shootings take place without warning, and often innocent people are hit. The gang suffering a casualty usually organizes its own retaliation raid against other gangs thought to be responsible. This "payback" cycle repeats itself again and again.

Youth gang activity across the country does not stop at violence against other gang members. They are also responsible for many purse snatchings, muggings, and other forms of violent crime. In addition, many are also involved in drug trafficking, the movement of stolen property, and extortion through "shake downs" and beatings.

## ■ Crime in the Schools

The problem of school crime, violence, and vandalism has grown and developed gradually over the past three decades. One researcher, Robert J. Rubel, in his book, *The Unruly School,* has identified three different kinds of student misbehavior during this period of time.

From 1950 until about 1968, most schools experienced little more than occasional student pranks and disorders which were quickly dealt with, usually by suspensions and expulsions.

For a short period of time beginning in 1968, students in some schools organized demonstrations and even rioted, most often over local school issues. However, the major disruptions which hit the college campuses in the 1960s never extended to any significant degree to the secondary schools. By 1971, this activity all but disappeared.

In 1970, a new and more serious type of student misbehavior began to be noticed in some, mostly big city, schools. This involved outright criminal acts of all kinds from petty theft to extortion to murder.

The most recent and comprehensive statistics on school crime, violence and vandalism were released by the U.S. Senate Subcommittee in its preliminary report, *Our Nation's Schools—A Report Card: "A" In School Violence and Vandalism.* It stated that between 1970 and 1973:

- vandalism cost the nation's schools $500 million each year;
- burglaries of school buildings increased 11.8%;
- robberies in schools increased 36.7%;
- assaults on teachers increased 77.4%;
- assaults on students increased 85.3%
- the confiscation of deadly weapons at school increased 54.4%;
- rapes and attempted rapes increased 40.1%;
- murders increased 18.5% (to 100 a year).

These statistics (based on questionnaires sent to 757 public school superintendents)

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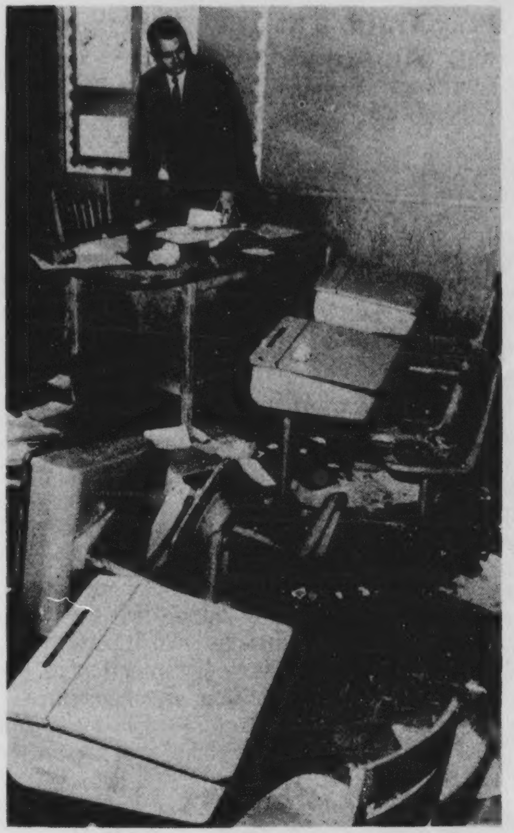
*Thrasher, F., *The Gang,* The University of Chicago Press (1963).

caused the U.S. Senate Subcommittee to Investigate Juvenile Delinquency to conclude in its 1975 report that "... this level of violence and vandalism is reaching crisis proportions which seriously threaten the ability of our education system to carry out its primary function."

Have we reached these "crisis proportions" yet? In 1980, the National Institute of Education reported that approximately 5,200 junior and senior high school teachers are physically attacked each month. Congressional inquiries have uncovered an estimated rate of 100 murders, 12,000 armed robberies and more than 200,000 assaults on teachers and students nationwide each year. The New York City Schools alone, in the 1979–1980 school year, experienced 3,395 crimes against teachers; 130 guns and 277 knives were seized from students. Many such crimes are perpetrated by individual students in isolated situations, but the tremendous increase in gang activity in big cities also plays a large part in school crime.

### *For Discussion*

1. Describe how student misbehavior differed in each of the following periods: 1950–1968; 1968–1971; 1970–present.
2. How did high school disruptions during the late 1960s differ from those on college campuses?
3. What do you think are the primary causes of crime in your school? Explain.



Vandalism is a critical issue at many schools today. [UPI]

## ▶ Trouble at Coolidge High/ An Activity

Can anything be done about youth violence, especially as it affects the schools? One approach has been to involve members of the school community to find workable solutions to the problem. In the following activity, imagine that you are part of a "School Governance and Complaint" Committee set up to deal with the problems confronting Coolidge High School.

To conduct the activity, follow these steps:

1. Divide the class into five groups, each with the following roles:
   a. School Principal
   b. Teacher
   c. Student Representative, elected by the student body
   d. Student Body President
   e. Parent

Students playing each one of these roles will participate on a five-member School Governance and Complaint Committee dealing with a problem which has come before that body. Before forming committees, it is important to consider how a person in your assigned role might view and react to a problem of violence facing a school. What interests of that person would be affected?

1. Get together in your groups and discuss how a person in your role would respond to issues that might be presented at a School Governance and Complaint Committee meeting.

2. Now regroup and form separate School Governance and Complaint committees, assigning one member from each sub-group to the Committee. (Thus, each Committee should have a principal and student body president, and at least one teacher, parent and student body representative.) Each principal should act as chairperson of his or her Committee.

3. Conduct the role play by reviewing and discussing the following case study within your School Governance and Complaint Committee. In making your recommendations for dealing with the problems raised in the case study, consider the following questions:
   - What are the most serious problem(s) facing Coolidge High?
   - Which of the proposals in the school plan will be effective in dealing with the problems? Which will be ineffective? Why?
   - What additional proposals might be effective? Why?
   - What proposals should be adopted to form the school plan? Why?

4. At the end of the role-plays, the principals should report on their Committee's decision(s). As a class, discuss the plans that the committee developed, as well as the viability of a School Governance and Complaint Committee as one means of addressing the problem of school gangs and crime. The following questions may serve as a basis for your discussion:
   a. What are the strengths and weaknesses of the various plans? Which one is most likely to be successful?
   b. Would you like to see a School Governance and Complaint Committee formed in your school? Give your reasons.
   c. How should committee members be selected?
   d. How much authority should they have?
   e. Do students in your school need a place to register complaints?
   f. Are there ways other than through this kind of committee to deal with school governance that would be better? If so, what are they?

5. Make a list of issues you would take before a committee set-up at your school. In a class discussion decide which of these issues are the most important.

### Case Study: Gangs and Vandalism at Coolidge High School

Coolidge High School is an old inner city school which has had trouble with gangs for many years. There are at least three rival gangs with large memberships among the student body. While the most serious outbreaks of violence have occurred off campus at night and during weekends, the school has been subject to extensive vandalism which appears to be gang related. Gang names and symbols have been painted on the walls and carved on desks; threats and challenges appear on the walls of the school entrance. It has been necessary as a result of several violent acts on campus to increase the number of security guards and to attempt to find and confiscate weapons in the possession of students. Numerous efforts have been made by the administration to reduce or eliminate these problems but so far nothing has worked. The following proposals now make up the school's plan for dealing with this issue:

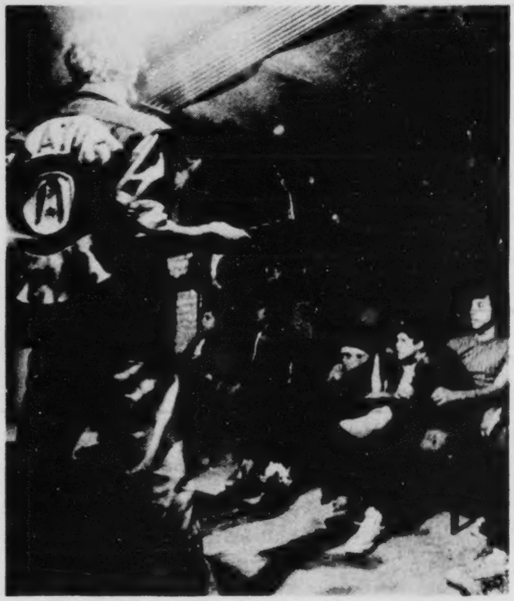
1. Teachers are ordered to check periodically the condition of classroom furniture and to ask students to report any new marks.
2. The use of felt pens and magic markers

has been prohibited.

3. Students who are apprehended in the act of vandalizing are required to join in work teams to clean, repaint, and repair defaced property.
4. Parents are infomed of their liability for the destruction of property by their children.
5. Students are lectured by their teachers and the administration.
6. A campaign designed to increase school pride has been undertaken.

None of the steps taken so far has had any notable success. School morale is very low.

Mr. Martines, a faculty member, appears before the Committee to make a report on his work with the gangs in the school. He tells the Committee that he has made a special effort to get to know and work with gang members. He has provided them with special tutoring, worked with them on the development of a recreation program for their members, and has succeeded in bringing about a signed truce between rival gangs in the community. He indicates to the Committee that the gangs have offered to guard the school and protect it from vandals and from students from other neighborhoods who might try to enter the campus. In return, they would like to be given permission to wear their gang caps and jackets on campus.



Youth gangs threaten the peace and security in some American schools. [UPI]

## ■ Swindlers and Con Artists

Most criminals are not young and violent. People from all walks of life and age groups commit crimes. Many criminals never physically hurt their victims; instead they hurt or even ruin them financially. In 1981, 90% of reported crimes were against property. Street thieves and burglars usually rely on opportunity and speed, not on guns or knives to commit their crimes. Another brand—the swindler or con artist—relies on the victim's trust.

### The "Swindler of the Century"

In 1975, C. Arnholt Smith, a banker with investment interests in numerous companies, stood convicted of swindling his own bank depositors and company stockholders out of an estimated $150 million. *Forbes,* a business magazine, called Smith "perhaps the swindler of the century." The victims of C. Arnholt Smith's schemes—as well as thousands of other fraud victims in the country—have barely gained the public's attention. Yet, more money is lost by people each year as a result of fraud than by all the robberies, burglaries, lootings, and other forms of theft combined.

C. Arnholt Smith started his climb in the business world as a bank teller for the Bank of America in Southern California. From this modest beginning, Smith built an empire of businesses, investment companies, and banks. In 1933, he bought control of the United States National Bank of San Diego. This bank became the key to his financial empire—and to his gigantic swindle.

In addition to his own bank in San Diego, with nearly $1 billion in deposits, Smith controlled a $200 million investment company with interests in tuna-packing, produce, transportation, and real estate. From this maze of business holdings, Smith devised an operation which illegally funneled millions into his own pockets.

Simply put, Smith used the companies he owned—some of which were phony—to make loans which he approved from his U.S. National Bank. Much of this loan money eventually ended up in the private accounts of Smith and his friends. When the loans came due, Smith opened secret accounts in his bank to funnel money to his companies so that they could meet their loan payments. In effect, Smith arranged things so that his bank was paying off its own loans. In the meantime, at board meetings Smith continued to represent the bank depositors and stockholders he was stealing from.

From 1963 to 1973, the illegal loans

increased from $17 million to $345 million. Even federal bank examiners failed to stop the multimillion dollar swindle. They were evidently either fooled or pressured by Smith into not reporting his illegal loan operation. However, in 1972, a bank examiner did blow the whistle on Smith. His bank folded in 1973, and he was charged in federal court with conspiracy and fraud.

In 1975 Smith, who was 76 at that time, was fined $30,000 and put on five years probation.

### Con Games and Other Ripoffs

Estimates hold that confidence games of one sort or another cost Americans up to $3 billion a year. Everyone seems to be a potential victim of these schemes: the rich, the poor, the young, the old, business executives, housewives, city residents, and rural dwellers. Moreover, people are as gullible as ever. Dallas police Investigator W.E. Orzechowski once said: "Con men basically are using the same old schemes, time after time, and they still work."

P. T. Barnum, the great showman, said "there's a sucker born everyminute." Many police bunco officers now think that Barnum was 59 seconds off. Today, con men and women call their victims "lames," "marks," "lambs," "moms," "pigeons," "chumps," "dupes," and "clowns."

Con artists frequently possess characteristics which set them apart from the ordinary criminal. They are usually above average in intelligence; they love to act; and, above all, they are patient. Some cons will spend months or even years "building up" a victim.

Swindlers often operate in teams. The "steerer" makes the first contact with the victim and gains his/her trust or confidence. The "steerer" then leads the victim on to the "hustler" for the kill. When crowds of people are involved, "shills" locate victims and lure them into the swindler's game or scam.

Police generally give three warnings to people to avoid ending up as a ripoff victim: (1) There is no such thing as something for nothing; (2) Anybody can be conned; and (3) Learn to say "no" to schemes suggested by strangers.

In the following paragraphs, six classic swindles are illustrated.

### Pigeon Drop

Sly meets well-dressed Mrs. Green, age 79, at a bus stop one day. While conversing in a friendly way, Sally spots an envelope on the sidewalk. The envelope, according to Sally, contains $6,000. Another woman, Bertha, joins the conversation, not letting on that she is Sally's partner. Sally asks Bertha and Mrs. Green what she should do with the money. A conversation then takes place during which the two cons get Mrs. Green very excited over the find. Soon it is suggested by one of the cons that they all three share in the bonanza. Bertha, however, recommends that Sally go to a nearby lawyer she knows for advice. Sally leaves and, upon returning, says that the lawyer told her the three should share the $6,000. But, says Sally, the law requires that the money be kept by a neutral party for six months. Sally tells the others that the lawyer has agreed to hold the $6,000 if they will put up a bond of $1,000 each to show good faith and to prove that they have the financial means in case someone shows up at a later date to claim the money. Sally suggests they all go to their banks, each withdraw $1,000, and meet back at the bus stop. When this meeting takes place, Sally says she will take the $6,000 plus the bond money from Bertha and Mrs. Green to the lawyer for safekeeping. After Sally leaves, Bertha makes an excuse to exit, and Mrs. Green is left alone–minus her $1,000.

### Envelope Switch

Sam, posing as a soldier, meets Bill in a bar and asks him where he can get a woman for the night. After Bill gives Sam an address, Sneed–Sam's partner–appears and warns Sam: "Don't go there. They are a bunch of thieves." Sam, however, wants some pleasure, so he asks Bill if he will hold his money for the night. Bill agrees, but Sam wants some assurance that his money will not be lost. So he suggests that Bill put all his money in an envelope, along with Sam's money. "That way, I know you will not lose it," Sam tells Bill. Bill puts his money in an envelope with Sam's cash, and places the envelope in his pocket. Sam and Sneed both shout, "Don't you know how to hold money?" Sneed then takes the envelope and places it inside Bill's shirt. Only later does Bill realize that the envelope has been switched, and he has been swindled.

### Bank Examiner Swindle

Harry calls Maria, a young housewife, and identifies himself as a bank examiner. Harry got her name by watching her fill out a deposit slip at her bank. Harry tells Maria that he believes one of the tellers at her bank is embezzling money from her savings account. Harry then asks Maria to help him trap the teller. He tells Maria that she will be awarded $100 if she cooperates. After agreeing to help, Maria is instructed to withdraw a large sum of money from her account. "After you do this," Harry tells Maria, "one of our security men will call at your home to pick up the bills so that the serial numbers can be examined." Harry then tells Maria that her money will be redeposited with an additional $100 for her trouble. Maria withdraws the money, another con picks it up at her home, and she learns when her next bank statement arrives that she has been taken.

**Widow Scheme**

Velma has just lost her husband of many years. Cecil knocks at her door and expresses his deepest sympathy. He then explains that, shortly before her husband departed, he had ordered a beautiful, leather-bound family Bible. "He wanted it to be a surprise for you," Cecil tells the widow. "He paid $5 down," Cecil continues, "but the balance is $45." Cecil then goes into a long song-and-dance about how sorry he is to bring the matter up now, but he is only a poor man trying to make a living, etc. Velma, overwhelmed by emotion, hands over the $45 for the Bible (which is worth only $10), and Cecil is off to his next widow.

**Murphy Game**

Mark, a sailor on liberty, is a little drunk and is trying to connect with a woman for a good time. Horace and Sweeney befriend Mark and take him to a nearby hotel. Horace and Sweeney tell Mark the number of a room where he will find a woman, but they warn him to leave his money with them. "She's a pickpocket," Horace tells Mark. Mark hands over his money to his new friends and goes stumbling up the stairs. When he gets to the room where the girl is supposed to be, he finds no one is there. When he goes downstairs, he discovers that Horace and Sweeney are nowhere to be found. The sailor is left high and dry.

**Badger Game**

Sarah meets Fernando, a well-dressed traveling salesman, at a bar. They hit it off very well. Fernando tells Sarah all about himself and his wife. Sarah then invites Fernando to her apartment. After they snuggle down on the sofa, Frankie barges into the apartment, suitcase in hand, pretending to be Sarah's husband. Frankie shouts and raves on about how he, the honest husband, has been double-crossed. Frankie then starts talking about going to Fernando's wife with the sordid details of his liaison with Sarah. At this point, Fernando almost begs Frankie to take a large sum of money in order to keep him quiet. After Fernando leaves, Sarah and Frankie split the night's profits.

### *For Discussion*

1. Do you think the penalty that C. Arnholt Smith received was appropriate? Explain your answer.
2. Why do victims fall for swindles? How can they avoid them?

## The Basics of Crime

Before we begin a study of what constitutes a crime, it is important to understand one characteristic that distinguishes criminal from civil law—punishment. In general, civil cases are intended to establish whether a defendant has injured a plaintiff and, if so, to what extent. Also, ways to compensate the plaintiff for his or her loss are determined. In criminal cases, the focus is on whether the defendant has injured *society* and what sentence is appropriate to punish the defendant for his or her deed.

In many instances, it is not difficult to determine what kinds of conduct should be outlawed in our society. For example, everyone would agree that murder, rape and arson should be prohibited. A problem arises, however, with regard to certain other acts. Should the use of drugs or prostitution be made criminal? What about gambling or private sexual activity? What conduct should society prohibit? These issues are often hotly debated and raise questions about where criminal laws come from in the first place.

### The Sources of Criminal Law

Our criminal laws are derived from two major sources, the common law and legislative enactment. A "common law" is judge-made rather than legislature-made law. Instead of being created by statute, it is based on legal precedents set in earlier cases. Originally, the criminal laws in England were almost entirely unwritten. If a judge heard a case and considered that certain conduct was anti-social and ought to be a crime, he made it a crime and punished the offender accordingly. Such decisions were usualy based on the customs and values of society at the time. As more decisions were made, a body of criminal law evolved and was refined.

The definitions of crimes and defenses that were developed in the decisions of the English courts later became part of the common law adopted in early America. In turn, American courts began contributing to the common law, with the result that over the years a rather unwieldy body of law developed. The following excerpt from the trial of William Penn, 6,* in 1670 demonstrates some of the problems that can arise in trying to define the common law.

"Penn: I desire you would let me know by what law it is you prosecute me, and upon what law you ground my indictment.

Rec.: Upon the common law.

Penn: Where is that common law?

Rec.: You must not think that I am able to run up so many years, and over so many adjudged cases, which we call common law, to answer your curiosity.

Penn: This answer I am sure is very short of my question, for if it be common, it should not be so hard to produce.

Rec.: The question is, whether you are Guilty of this indictment?

Penn: The question is not, whether I am Guilty of this indictment, but whether this indictment be legal. It is too general and imperfect an answer, to say it is the common law, unless we knew both where and what it is. For where there is no law, there is no transgression; and that law which is not in being, is so far from being common, that it is no law at all.

Rec.: You are an impertinent fellow, will you teach the court what the law is? It is 'Lex non scripta,' that which many have studied 30 or 40 years to know, and would you have me tell you in a moment?

Penn: Certainly, if the common law be so hard to understand it is far from being common."**

In the United States today, the states are divided on the issue of whether the criminal courts can, in the absence of a criminal statute passed by the legislature, declare conduct to be criminal. Most states still recognize the power of the courts to create common law crimes, although this power is seldom exercised. In a minority of states and in the federal courts, common law crimes have been abolished altogether. In these jurisdictions, if conduct is not forbidden and punishable by a criminal statute, it's not a crime.

The other major source of criminal law is legislative enactment. By the mid- to late-19th century, reacting to the problems which had arisen with the common law, legislatures of the various states began enacting comprehensive criminal codes. Many of the laws in these criminal codes embodied all of the elements of the old common law crimes. Today, legislative enactment is the main source of criminal law.

### Classification of Offenses

At common law, crimes were divided into two categories—*felonies* and *misdemeanors*. The common law felonies were murder, manslaughter, rape, sodomy, mayhem, robbery, arson, burglary and larceny. All other crimes were misdemeanors.

Under modern criminal law, the distinction between felonies and misdemeanors is spelled out by statute. A common approach is to make any crime punishable by death or imprisonment in a state prison a felony; a crime punishable by internment in a local jail is a misdemeanor. Other states distinguish on the basis of length of imprisonment, not on the place. For example, a felony is often defined as a crime punishable by one year in prison and/or a $10,000 fine. Misdemeanors are crimes punishable by up to a year of incarceration and a lesser fine.

### *For Discussion*

1. What is one characteristic that distinguishes criminal from civil law?

2. What are two sources of criminal laws? In your own words, how do they relate?

3. Today, the criminal law of every state is contained in numerous statutes which punish a broad spectrum of activities. But what would happen in a state where judges are not permitted to create new common law crimes if a person found some "loophole?" For example, what if an individual did something bad that was not specifically outlawed in the state's criminal statutes? Should the courts be allowed to recognize the new crime in order to fill that "gap"? Explain your answer.

4. For each of the following, decide:
   - Should the conduct described be a crime? Why?
   - If so, should it be a felony or misdemeanor? Why?

   *Be prepared to discuss your answers with the class.*

   a. Margaret tells the police that an officer who stopped her on the street was verbally abusive to her. She is lying.

   b. Sam sees a young boy struggling in a pond and calling for help. He does nothing and the boy drowns.

   c. Dick and Suzanne are living together. They have no intention of getting married in the near future.

   d. Robert holds a toy pistol to Ashley's head and demands all of her cash and jewelry. She believes it's a real gun and hands over the goods.

   e. Pedro calls a local pizza parlor and orders five pizzas to be delivered to a phony address.

   f. Jane's country is at war. She shoots and kills an enemy soldier.

   g. John lets his dog run wild around the neighborhood, even though he knows that the dog constantly knocks over garbage cans looking for food and scares young children.

5. *Crimes in your State:*

   Look up the following crimes in your state's criminal or penal codes or contact a prosecuting or defense attorney to help you find out how they are defined and classified in your state and what their penalties are.
   - Do you agree with the classifications and punishments for these offenses?
   - Should any of them be treated as more or less serious crimes than is currently the case? Explain.

| ***Crime*** | ***Felony/Misdeamor*** | ***Punishment*** |
|---|---|---|
| Murder | | |
| Battery | | |
| Shoplifting | | |
| Marijuana Possession | | |
| Prostitution | | |
| Robbery | | |
| Automobile Theft | | |
| Vandalism | | |
| Arson | | |
| Bigamy | | |

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*How St. Trials 951, 958 (1670)

**Inbau, Thompson & Moenssens, *Criminal Law*, Foundation Press (1979).

## Ingredients of a Crime

Before imposing penalties, society must be sure that criminal behavior has taken place and that a given individual was responsible for it. There are four basic ingredients for almost every crime. Each must be proved beyond a reasonable doubt before a person can be convicted of committing a crime. They are: a prohibited act (called the *actus reus* at common law), criminal intent (called *mens rea* at common law), concurrence of the act and intent, and causation (a result which was caused by the act).

The following chart summarizes the various ingredients. You might want to refer back to it as you read the accompanying explanations for each element.

A "Crime" is:

| ***A Criminal Act*** + | ***Criminal Intent*** + | ***Concurrence of*** + ***Act and Intent*** | ***Causation*** |
|---|---|---|---|
| **Conduct prohibited by law** | **3 kinds:**<br>**1. General**<br>**2. Specific**<br>**3. Criminal Negligence** | | **Result must be caused by the act.** |

*Criminal Act:* The law doesn't punish people just for having criminal thoughts (e.g., Sally daydreams about kidnapping Ramon). Liability is based on carrying out some *affirmative act,* which generally differs from crime to crime ... in murder, it is homicide; in rape, it is intercourse; in burglary, it is breaking into someone's dwelling. In a few limited situations, liability may be based on *failing to act* when you have a legal duty to do so (e.g., Sam lets his three year old son die of a prolonged illness without getting medical help. Sam had a legal duty to provide medical care for his child).

*Criminal Intent:* The criminal laws are generally designed to punish only those who have a "guilty mind," not those who "didn't mean to do it." However, what constitutes *mens rea,* the so-called "guilty mind," may be difficult to determine, because under the law it can mean different things. The criminal intent required for most crimes usually falls into one of three categories: *general intent, specific intent,* or *criminal negligence.*

- *General intent* is the intentional doing of some prohibited act. The only necessary state of mind is an intent to commit the act of which the crime is made up. The defendant need not have intended to break the law or have been aware that his or her act was criminal under the law. Example: Tom picks up a loaded gun and shoots it into a crowd of people. Mary is hit by a bullet and dies. Although Tom did not intend to kill Mary or anyone else in particular, he did intend to shoot the gun under circumstances very likely to cause someone's death. It resulted in Mary's homicide.
- *Specific intent* means that the defendant intended to bring about a particular result, not just commit the act that caused the result. Example: Tom steals Mary's pen from the top of her desk. This is larceny, which requires a specific intent to permanently deprive the owner of his or her property.
- *Criminal negligence* provides *mens rea* when a person does some act unintentionally but with an extreme lack of care. Example: Tom is drunk and decides to go for a ride. A pedestrian steps in front of his car and he is too inebriated to stop in time. The pedestrian is badly injured.

There are a few "strict liability" crimes in which no *mens rea* is required. Since there is no intent requirement in these cases, even a completely accidental violation of the law is a crime. The person may be held strictly liable as soon as he or she commits the prohibited act. Two common examples of strict liability crimes are bigamy and statutory rape. Even if a defendant has no idea that his or her first spouse is still living or never obtained a valid divorce, or that his or her sexual partner is below the age of consent, he or she may still be convicted of one of these strict liability offenses.

*Concurrence of the Prohibited Act and Criminal Intent:* The act which constitutes the crime has to be the result of a person's criminal intent. This means that the defendant must have had the requisite intent *at the moment he or she performed the prohibited act,* but not necessarily at the moment that the *result* occurred. For example, a person could form the necessary intent to kill a year or several minutes before the act and not at the time the victim actually dies.

*Causation:* The prosecution must prove that *but for* (except for) the defendant's acts, the result would not have come about how and when it did. The defendant's act must have been a material factor in bringing about the harm.

***Activity:***

In each of the hypothetical cases that follow, see if you can identify how many of the basic elements of the particular crime are present. Is there:

- a prohibited act,
- criminal intent,
- concurrence of the act and the intent, and/or
- causation?

Explain your answers.

**Case #1: Tim**

Marcos and his friends, Tim and Jill, were having a beer together at their local bar. When Tim went to the jukebox to play more music, Marcos asked Jill to dance. Tim became jealous and punched Marcos in the face. Tim has been charged with battery.

**Case #2: Karen**

Karen stole some poison from her chemistry class, placed it inside of bottled cold capsules and returned the bottle to the grocery store shelf. A month later, Wanda purchased one of the bottles, took a cold capsule and died. Karen has been charged with murder.

**Case #3: Ray**

Mr. Anderson sat on his front porch cleaning his rifle. Many children were playing on the sidewalk in front of his home. When Mr. Anderson turned the gun over it went off, killing one of the children in the crowd. He has been charged with involuntary manslaughter.

A bank robber caught in the act by a security camera. [UPI]

**Case #4: Gina**

Gina was shopping in her favorite department store. She saw a sweater that she liked, stuffed it into her book bag and ran out of the store. A security guard caught her; Gina has been charged with larceny.

**Case #5: Gayle**

Gayle shoots Mary in the big toe. Mary goes to the hospital to have her toe examined and treated. One week later, Mary dies of blood poisoning that she got from an unsterilized medical instrument. Gayle is charged with murder.

(See answer section.)

## Murder Most Foul and Other Crimes

No crime commands more interest in society, literature or law than that of murder. The idea of "Thou shalt not kill" is an essential ingredient of not only Judeo-Christian and Islamic tradition, but of most other religions as well. Throughout the ages, fiction and non-fiction writers and story-tellers have been fascinated by the facts and circumstances of one human being killing another. Today, in our country, the most severe penalty our society can inflict—death—is reserved for those who commit murder under certain special conditions.

Like all crimes, murder by law is made up of certain elements. These must be present and proved before a person can be convicted. Let's examine some of the specific elements of murder and then those of some other famous crimes.

Murder at common law and under many modern statutes is the unlawful killing of a human being with *malice aforethought*. "Malice aforethought" is the intent or *mens rea* element of this crime. It doesn't mean what you might expect it to if you looked it up in the dictionary. Malice aforethought is sometimes defined as an *actual or implied intention* to kill. Actual intent is found when the defendant consciously meant to cause another's death. Implied intent exists where the defendant intended to cause great bodily harm (and the person subsequently died) *or* should have known that his or her actions would result in death or great bodily harm. Consider some examples.

- If Barbara hates Michael, decided to kill him, and picks up a knife and does so, the element of criminal intent (here, malice aforethought) is present. In this case, Barbara's *malice aforethought* was an *actual intent* to kill Michael and she could be charged with murder.
- If Barbara hates Michael, decides to hurt him badly, stabs him in the chest and kills him, malice aforethought is also present. This time it is in the form of *implied intent*, because she did not specifically intend to kill, but only cause great bodily harm.
- If Barbara hates Michael, decides to scare him and pushes him out in front of oncoming traffic at a street corner, and if Michael dies as a result, malice aforethought is also established. In this case, though Barbara didn't intend to kill or even seriously injure Michael, she should have known her actions would cause him to die or suffer great bodily harm. Under the law, Barbara had *implied intent* to kill Michael.

Over the years, the law has developed to the point where several degrees of criminal homicide (literally "man killing") are recognized. Most legislatures today distinguish between different degrees of homicide so that a range of penalties is available in sentencing. Criminal homicide typically includes various laws grouped under the crimes of murder and manslaughter.

### Degrees of Homicide

The modern classification of murder is often split into first and second degrees. *First Degree Murder* is generally an unlawful killing that is *willful, deliberate and premeditated*. This means a person had an actual intent to kill and an opportunity to weigh and consider the matter after the intent had arisen even if only for a very short time. You might think of the *premeditation* requirement as the killer asking him or herself, "Shall I kill?" When the answer is "Yes, I shall" is made, *specific intent* is established. To establish deliberation, the killer then must think about a question similar to: "Wait, what about the consequences?"

*Second Degree Murder* is the unlawful killing of another with malice aforethought but *without deliberation and premeditation*. This covers all murders that are not in the first degree.

In *Felony Murder*, one person kills another while committing a felony. If this is done while committing certain felonies, such as robbery, rape, arson, etc., it is characterized as a first degree crime in many states. Killings done while committing other felonies are considered to be second degree murder.

The other types of criminal homicide are grouped under the crime of manslaughter. *Voluntary Manslaughter* is the unlawful killing of another *without malice aforethought*. In these cases, the person must have been acting in the "heat of passion" (e.g., anger or jealousy), prompted by some serious provocation on the part of the victim, when he or she committed the offense. The circumstances surrounding the homicide do not *excuse* the person's behavior; the offense is considered to be somewhat mitigated. If, however, there is a period between the provocation and the killing in which the person has a chance to "cool off," malice aforethought may exist after all and a murder charge would apply.

*Involuntary Manslaughter* is an *unintended* killing which takes place during the commission of an unlawful act other than a felony. Involuntary manslaughter can also be a killing as a result of *criminal negligence*.

States also have a separate offense called *Reckless* or *Vehicular Homicide* for cases of negligent killings when the person was driving a motor vehicle.

### A Look at Other Crimes

Your wallet has been stolen! Are you the victim of a larceny (theft), burglary or robbery? The answer to this question depends on how and where the wallet was taken...

*Larceny* is the unlawful taking of another's property with the intention of permanently depriving the owner of its possession and use. If someone was to walk by your desk and take your wallet, he or she would be committing larceny, even if they just took out the money and put the wallet back. Under the criminal laws of some states, "larceny" also includes embezzlement, tricking someone into giving you their property, or even writing a bad check.

Traditionally, this crime was classified as either "grand larceny" or "petty larceny," depending on the value of the stolen property. This distinction has been retained in modern criminal statutes, with a harsher penalty being attached to thefts of property of greater value. In Illinois, for example, theft is a felony if the value of the stolen property exceeds $300. If it doesn't, the theft is classified and punished as a misdemeanor.*

*Burglary* at common law was the *breaking* into a *dwelling* at *nighttime* with the intent to commit a *felony* inside. This definition has been expanded over the years to encompass the entering of any building (not necessarily someone's dwelling) at any time with the intent to commit any crime.** Thus, if someone broke into your apartment (or in some states, even remained in your office after hours) and took your wallet, he'd have committed burglery.

Unlike burglary and larceny, *Robbery* is a crime against the person. Robbery is forcible stealing—the taking of a person's property by violence or threat of violence against him. If someone walks up, clenches his fist under your chin, orders you to give him your wallet and then runs away, he has committed robbery. *Armed Robbery*, in which the person uses or leads the victim to believe he or she has a dangerous weapon, is a more serious offense and carries a stiffer penalty.

### *For Discussion*

1. Read the following hypothetical case. Apply the facts of the case to the elements of murder, felony murder, voluntary manslaughter and involuntary manslaughter. Which of these crimes could not be charged? Why?

One day in gym class, Adam made fun of the way Rick was shooting a basketball. Rick called Adam a "jerk" and told him to "shut up." When Adam made another negative remark, Rick spun around, grabbed Adam and beat him up.

The next day, Adam, with a broken nose and a black eye, decided to get even. He loaded his father's gun and headed off to school to find Rick. He waited at Rick's locker for almost an hour, but Rick never appeared. Adam became impatient and nervously checked the gun again to make sure that all the chambers were loaded. Just then the school bell rang out sharply, causing Adam to accidentally fire the gun. The bullet ricocheted off a locker and hit a student who was walking out of class. She was killed instantly.

(See answer section.)

2. The penalties for these forms of stealing in every state are increasingly harsh:

*Larceny (Theft) → Burglary → Robbery → Armed Robbery*

If a wallet with only $20 in it is stolen in each of these cases, why do you think the punishments vary so much?

3. *Finding Out About the Law in Your State/ An Activity*

Choose one of the following two topic areas and research it by interviewing attorneys or police officers or by using a law library. Be prepared to report your findings to the class.

- What are the homicide offenses under your state's criminal laws? What are their penalties?
- How are the crimes of larceny, burglary and robbery defined in your state? What are the penalties for each?

4. *A Potpourri of Crime/An Activity*

*Step I:* Brainstorm and list all of the crimes you can think of, including the ones mentioned in this book (e.g., assault, rape, etc.). Make a class list on the chalkboard.

*Step II:* Watch your daily newspaper for articles which mention these crimes and bring them to class.

*Step III:* Invite a criminal lawyer to your class to explain the elements of each of the crimes on the list.

*Step IV:* Select one article for each of the different crimes on your list and see if you can identify the elements of the offenses within the facts given in the newspaper stories. Explain, for example:

- What type of criminal intent is required for the crime? Is there any evidence of intent in this case?
- What prohibited act did the suspect or defendant commit? How?
- What was the result of the suspect's/defendant's act?

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*Illinois Rev. Stat. ch. 38, §16-1 (1981).

**See, E.G., N.Y. Penal Law Act. 140 (1981).

## Defenses to Crime

Essential to our system of criminal justice is the notion that a person accused of crime is innocent until proven guilty and has the right to offer a defense to criminal charges. At trial, a criminal defendant introduces evidence, examines witnesses and makes arguments. If the prosecution fails to establish each and every element of the crime beyond a reasonable doubt, the defense has been successful.

The criminal law also recognizes certain special defenses to crime. The three best-known and most commonly used defenses to crimes are *Insanity, Self-Defense* and *Entrapment*. When a defendant raises one of these defenses, he or she claims that even if the prosecution can prove the elements of the crime charged, the defendant is not legally accountable for his or her actions. By their nature, these defenses have raised many controversies.

### The Insanity Defense

A defendant will be acquitted if he or she can prove that, at the time the crime was committed, he or she was "insane" within the meaning of the law. This defense has always been controversial, but public debate intensified after President Ronald Reagan was shot in 1981 and his attacker pleaded insanity. The defendant in that case, John Hinckley, Jr., purchased a gun and stalked the President for some time. He wrote a letter to a famous actress telling her what he planned to do. Millions of Americans watched in horror as videotapes of Hinckley positioning himself and shooting straight at the President played over and over again on national television. "How could this person be found not guilty?" they demanded.

For purposes of the criminal law, "insanity" has a very special meaning. Even in this context, there has always been a great deal of disagreement among legal scholars and lawmakers about what constitutes insanity for purposes of a defense to a criminal charge. Over the years, a number of different legal tests for determining insanity have been developed, but none have been universally accepted as valid. Depending on the jurisdiction, federal and state, several different standards for determining insanity are currently used.

1. *The M'Naghten Rule*. Under this traditional approach, a defendant must show that as a result of his or her mental illness, he or she either didn't know the nature and quality of his or her act or didn't know that the act was wrong. (*M'Naghten Case*, 8. Eng. Rep. 718, 1843)

Criticisms of the M'Naghten rule usually center on the fact that it does not take into account a defendant's inability to control him or herself. Thus, a defendant could be convicted under the M'Naghten rule even if he or she was totally unable to avoid committing the crime because of mental illness.

2. *The Irresistible Impulse Rule*. In some states, a defendant will be acquitted if he or she can prove that the crime was committed as a result of an "insane impulse" which controlled his or her will. This test of insanity is generally viewed as an alternative to the M'Naghten approach. (Est. *Parsons v. State*, 2. 50. 854, 1871)
3. *The Durham Rule*. To prove "insanity" under this rule, a defendant must show that the crime was "the product of mental disease or mental defect" of some sort. Because the idea of mental disease or defect is so difficult to define, this rule has a very limited following today.
4. *Model Penal Code Test*. A much stricter rule than Durham, this test has grown popular in the last decade. Many states have abandoned the M'Naghten rule in favor of it. Under this approach, a defendant is insane if, *because* of a mental disease or defect, he or she:
   - lacked substantial capacity to appreciate the criminality of his or her conduct; or
   - lacked substantial capacity to conform his or her conduct to the requirements of the law. (Modern Penal Code §4.01(1)

Under any of these tests, if the defendant can prove his or her case, he or she will be found "not guilty by reason of insanity." In a very few jurisdictions, however, juries can hold the defendant responsible for his or her crime by a verdict or "guilty but mentally ill."

### Self-Defense

You are alone in your apartment sleeping. It is 3:00 AM. Suddenly you are awakened by the sound of someone sliding open your bedroom window and you see a tall, heavy-set man with a mask over his face come in. It's not clear whether the intruder is armed, but you decide not to take any chances. You pick up the lamp next to your bed and throw it at him. The man slumps to the floor and you call the police. Can you be charged with battery? The answer is yes, although it's not very likely. And even if you were prosecuted for the battery, there would be a strong claim of self-defense in this case.

Generally, a person may use whatever force is necessary to defend him or herself or another against an apparent threat of immedi-

Ronald Reagan's attempted assassin, John Hinckley, Jr., caused a fervor over the validity of the insanity defense. [UPI]

ate violence. For a proper claim of self-defense, a defendant must establish that:

- He/she *reasonably* believed that the force was required for his or her own or someone else's protection (even it that belief turns out to be erroneous);
- The threatened harm was imminent and the attacker was willing and able to injure him or her; and
- The force used in self-defense was "reasonable"—that is, no more than was necessary to prevent the victim from inflicting harm.

The use of *deadly force* in self-defense is much more limited. Deadly force may only be used where a person reasonably believes, based on the circumstances at the time, that the other person was about to kill or inflict great bodily harm on him or her and that the deadly force was the only way of preventing such harm.

**Entrapment**

Another defense that has received much public attention lately is entrapment. Entrapment occurs when a defendant is lured into committing a crime by a law enforcement officer or agent of the government. The idea behind thisdefense is that even though the defendant committed a crime, he was enticed into doing it by the police or government agent and would not have done it otherwise. But if the defendant already had the idea in mind, and the officer only makes it possible for him or her to do it, entrapment is no defense.

The federal government's "ABSCAM" operation in the early 1980's is an excellent example of an entrapment defense that failed. The FBI invented a phony Arab Sheik, Kambir Abdul Rahmen, to try to bribe one U.S. Senator and seven Representatives. They filmed all of the transactions in this "sting" operation and used the films as evidence in the officials' trials for accepting bribes. The issue of entrapment was central to all of the defendant's defenses, but it was unsuccessful. Why?

The FBI had received reliable information that these particular Congressmen were corrupt, so they decided to investigate further. The defendants' criminal intent already existed. The FBI, said the courts, had merely provided an opportunity to do something they already had the intent to do.

***For Discussion***

1. Read the following hypothetical and decide under which, if any, of the insanity tests described on page 38 the defendant could be judged "not guilty by reason of insanity." Explain your answers.

During his trial for murder of a friend, the defendant, Mark Khasabian, made the following statement. "I knew that it was wrong, but I couldn't help myself. During the night of April 30, Beezlebub, Grand Duke of Hell, came to me with biddings from the Master. He told me to kill my friend. I resisted, but His will was too strong and finally I had to do what I was told." (See answer section.)

2. What test for insanity is applied by criminal courts in your state? (Ask a criminal attorney or consult your state criminal code.)

3. *Writing Activity:* Choose a pro or con position on the following statement: "The Insanity Defense Should Be Abolished."

Research the question at your local or school library. (You will find plenty of information in recent news magazines and additional sources in the Guide to Periodical Literature.) Write a two or three page essay supporting your point of view. These can be used as the basis of a class discussion or debate.

4. Read the following hypotheticals carefully. For each, decide: a.) What defense might be raised? b.) Is the defense valid in this case? Why or why not? (See answer section.)

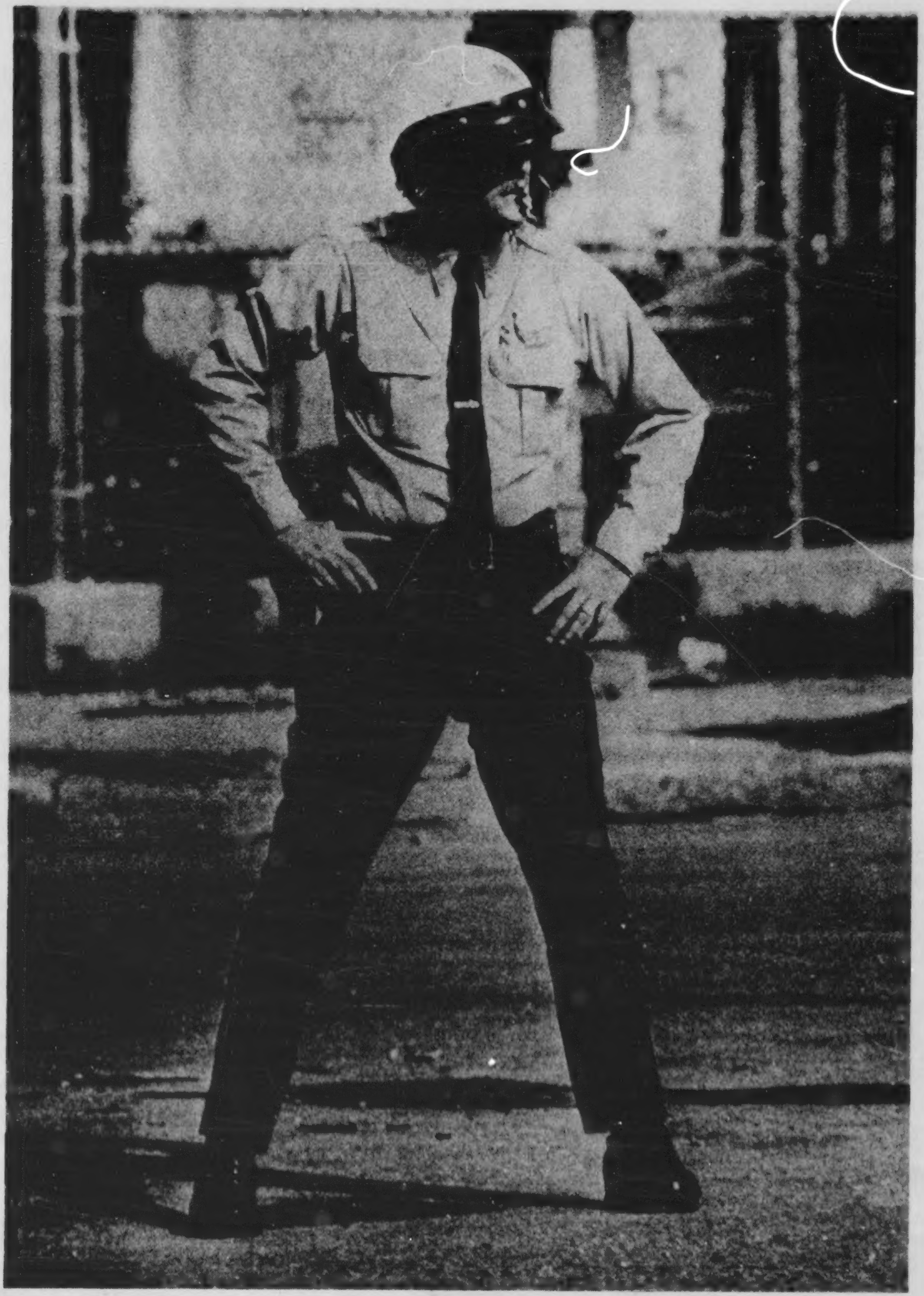
a. Peter Hope, charged with assault with a deadly weapon, shot a man who approached him on the street. The man had begun hitting him with a rolled-up newspaper.

b. Officer Martin, in plain clothes, approached Martha Heart on the street and offered to sell her a "hot" radio for a very cheap price. Martha at first refused, but the officer convinced her to buy it. He then arrested Martha for receiving stolen property.

c. Karen Diephaf, a recent victim of two burglaries at her home, heard a noise on her front porch. She reached for her mace can and flung open the door to discover a man bending forward with his hand on the doorknob. He stood bolt upright and reached into his pocket. Afraid that he had a weapon, Karen squirted him in the eyes, partially blinding him. As it turned out, the man had come by to ask for a charitable donation and had been reaching for his identification card.

5. Using a law dictionary, define and give an example of the following defenses to crimes: *infancy, intoxication, necessity* and *duress*. Are these defenses included in your state's criminal code?

Did the ABSCAM operation involve illegal entrapment? [UPI]



[UPI]

# The Police

The job of a police officer is not an easy one. They are expected to enforce society's laws, some of which are not popular. They are required to deal with society's problems – quarreling spouses, drug and alcohol addiction, serious traffic accidents, and senseless violence. Sometimes, they must face danger and make lightning-quick decisions in life-threatening situations.

To be effective in their jobs, the police must have good relations with the public. Many contacts are positive – a child is found, a crime is solved, stolen property is returned to the owner. Other times the duties of law enforcement put the police into direct confrontation with the average citizen. Some of us have received traffic tickets or had other minor unpleasant experiences with the police. We grumble and go on our way. Others report serious problems with the police including harassment, beatings and other abuses of authority. Indeed, all of these interactions are possible and each shapes how the public views the police and the police the public.

The primary responsibility of the police, of course, is to enforce the law. At the same time, the constitutional rights of all citizens must be protected. In most cases, there is no conflict between these two basic goals. Officers are trained in both law and proper procedures. Occasionally, however, through overzealous enforcement, error or disregard, a citizen's rights are violated. To protect against and correct such occurrences is the responsibility of the whole criminal justice system. Both the police and the courts must play a part.

To meet all of these responsibilities, police must have authority. Yet, to preserve a free society, police authority cannot be unlimited. What that authority should be and whether it is properly used in particular situations are issues that can make police work difficult and sometimes controversial.

In this chapter, we go "behind the badge" to explore the role of law enforcement in our society. In doing so, you will encounter some interesting questions: What might it be like to be a police officer responding in the line of duty? What are people's attitudes about the police and how might that affect police work? How do our laws affect police investigations and arrests? What are the proper scope and limits of police authority? While you may never be one, what you learn in this chapter will give you a better picture of what it is like to be a police officer.

## A Question of Attitudes

In 1829, when Sir Robert Peel formed the first organized police force in England, he said: "The police should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police."* Has this ideal of police-community relations been borne out over time? Does the public believe that the police serve its interests? Do the police think of themselves as public servants? Consider the following viewpoints . . .

### "I Was Just Driving Home from the Movies"

"I was taking out a new girl. I had my brother's car and was really trying to be a big man. After the show we stopped off for pizza, and I suppose it was about 12:30 or 1:00 o'clock when we really started for home. I was driving slow because I wasn't in any hurry to get there. I can't remember doing anything unusual at all.

"All of a sudden, the car behind turned out to be a cop. On goes the red light. Well, I couldn't figure out what was happening, but I sure stopped as fast as I could. As the officer approached the car, I got out my driver's license. I've always been scared of cops for some reason, and so my hand was shaking. I hoped the girl wouldn't notice because it would be embarrassing to show that I was scared.

"When the cop got to the car, I rolled down the window. He said, 'Out of the car, boy!' I got out, and he made me lean up against the side and then kicked one of my legs out so far I thought I was going to fall down. Then he searched me or patted me down or whatever they call it. He didn't find anything so I thought he would let me stand up straight, but he made me stay where I was. Then he asked my girl to get out of the car. He asked her to open her purse, and he looked inside with his flashlight. Then he had her put the purse back in the car and told her to stand in front of the car in the light. After that, he searched the whole car. He was really thorough; he looked in the glove compartment, the ash trays, under the seats. He even pulled the back seat loose and just left it that way. Then he took out the keys, opened the trunk and took out everything he found there and laid it on the ground. When he still didn't find anything, he said, 'Don't let me catch you out this late again, boy.' Then he went back to his patrol car and just drove off.

"I don't think it's fair to treat people like that. He just left me there with my car all torn up without any explanation or anything. At least he could have told us what he was looking for or something."

### "Thank God, They Got There Fast"

"I live in an apartment house. You know, one of the kind with a swimming pool. They didn't use to let people with small children live there. Last year they changed the rules so they could fill all of the apartments, and several families with little kids moved in.

"Two weeks ago I was walking down the outside stairs facing the pool. I saw something funny in the water. It looked like some little kid swimming underwater with all his clothes on. Well, my mother had said somebody was going to drown ever since the little kids got there, so I ran over fast to see what was in the water. It was an unconscious little kid in the shallow end. I reached right down and grabbed his arm and pulled him out. He really looked weird. I guess I also started yelling 'cause people started coming over fast. Somebody yelled to call the cops. Somebody else grabbed the kid and started giving artificial respiration, you know, the old kind where you push on the back.

"Well, it couldn't have been more than a couple of minutes until I could hear a siren. By that time the little kid's mother was there, yelling and just about out of her mind. In a minute, these two cops came running in. One of them grabs the kid and starts doing that mouth-to-mouth resuscitation that they showed us about in P.E. class. This one keeps working on the kid. The other asks for the mother, and then, almost as quick as they came they were gone with the kid and the mother.

"That kid was really lucky. They got him to the hospital and saved his life. I couldn't believe it; I thought he was dead for sure. Thank God, the cops got there fast."

### "If I Live to be a Hundred, I'll Never Understand!"

"The guys I feel sorry for are the new ones, the guys straight out of the Police Academy. How they'll ever adjust to this city, I'll never know. About the time they get used to working with the Blacks, they'll be moved to the Chicano area. Then, by the time they're used to that, they'll go out West. When I started, things were much easier—you knew who your friends and enemies were. Now, you never can tell. Just last week, two officers were killed answering a medical emergency call. Imagine going to help somebody! Not a robbery or a silent alarm or anything! Just a medical emergency.

"As if things weren't bad enough, now we have to worry about being accused of using excessive force and police brutality. Let me tell you, until you've been a Cop under pressure to protect yourself and innocent citizens, staring down the barrel of a gun, knife, whatever, you don't know how difficult it is to make a split-second decision that may affect not only your life but the lives of many other people . . . not to mention possible legal proceedings and the threat of losing your job. Everyone is worried about the criminal and his legal rights, but what about dead cops? Isn't anyone worried about us?

"I often wonder how I ever got into this work anyway. You'd think we were getting huge salaries to put up with what we do. Sometimes I think my wife would be better off on welfare.

"Then there's the problem of rights. It's getting so hard to arrest a man correctly that we really need a lawyer in the car. You arrest a guy, give him his rights and ask him questions, but why should he answer your questions? You've just told him he doesn't have to! If you are lucky enough to make an arrest that the D.A. will file on, the court will probably throw it out on a technicality, or else the judge and the lawyers will plea bargain, and some guy who deserved 10 years will get probation.

"What I'd like to know is, why are we stuck with all this crap? I mean, who gave us the problems that we deal with every day? Why do the kids take drugs? Why do we have to worry more about the lives of attacking criminals than ourselves? It's not our fault they choose to attack and threaten us, but everybody thinks we have perfect, pre-planned responses to every possible incident that could occur! All we can do is play it by ear and hope we've done the right thing. Doing the wrong thing can mean the end of our lives, and—even if we live—a possible police brutality charge or suspension.

"No, I'll tell you, if I live to be a hundred, I'll never understand."

Many people today, including police officers, have mixed feelings about law enforcement and are uncertain of what the police function is. Young children, according to research, see police as those who give orders and punish people rather than those who help people and enforce laws. Research also indicates that the *power* of the police is what captures the imagination of young people, rather than the service they provide the public. Similarly, adults often believe that police officers perform their jobs not out of any sense of dedication to the community, but for the pleasure that comes from exercising power over others.

How accurate are these perceptions of the police? One study suggests that the police themselves have a much different view of their motivations.** Five hundred officers, from new recruits to veterans, were asked to respond to a form entitled, "I am a policeman because . . ." They were given a list of 40 possible responses and asked to choose ten which were the most important to them. The top five vote getters were:

- I want to improve the community.
- I want to improve police work.
- I am part of a team effort.
- I feel a civic responsibility.
- My imagination is stimulated.

On the other hand, at the bottom of the list, only about 10% of the officers said:

- I can find excitement regularly.
- I can wear a uniform.
- I can order other people around.
- I can carry a gun.
- I can use force legally.

***For Discussion***

1. Brainstorm and list some reasons why people might develop negative views of the police. How can they develop positive views?
2. Brainstorm and list some reasons why the police might develop negative views of the public? How can they develop positive views?
3. Would you ever consider becoming a law enforcement officer? Why or why not?

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*Cromwell, P. and Keefer, G., *Police-Community Relations,* West Publishing Co. (2nd edition, 1978). *Citing,* Graham, H., "Community Service," FBI Law Enforcement and Bulletin (October 1975)., p. 68.

**Cromwell and Keefer, p. 5.

## ▶ Sampling Public Opinion/ Three Activities

The following activities are designed to help you get an idea about public and police attitudes in your own class and community.

### ▷ Activity One

Each member of the class should respond to each of the items on the following questionnaire. Be prepared to discuss the reasons for your answers as a class. Then tally the class results on the chalkboards.

a. Police in my community treat most teenagers fairly.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

b. The police in my community are doing a good job.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

c. Police officers in my community would refuse bribes if offered to them.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

d. Police officers in my community generally avoid using physical force against people.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

e. Police officers in my community generally treat wealthy people the same as poor people.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

f. Police officers in my community generally treat males the same way as females.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

g. Police officers in my community treat all racial groups in the same way.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

h. Police should have the right to use whatever means are necessary to capture criminals.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

i. Situations in which the police abuse their authority are common.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

j. Police officers, undercover if necessary, should be assigned to school campuses.
☐ Strongly Agree ☐ Agree ☐ Unsure
☐ Disagree ☐ Strongly Disagree

### ▷ Activity Two

Construct an attitude survey to be used in your community. You may wish to conduct one survey of the general population, or several surveys directed at specific groups (e.g., homeowners, college students, women and men, racial groups, religious groups, business persons, etc.). Here are some additional statements you might consider using in your surveys:

- The community would be better off with fewer police.
- Police in the United States are criticized unfairly too often.
- Police in the community enforce drug laws too strongly.
- I would call the police if I saw someone break into a store.
- I would call the police if I saw a friend stealing a car.
- In the past four or five years, my attitude about the police has become more favorable.

### ▷ Activity Three

Conduct your own survey of *police* in your community, using a form like the one from the study described on page 46. How do your results compare with the officers' responses in that study? What might be some reasons for any differences that exist?

The first United States police force was established in Boston in 1840. [UPI]

## From Citizen Volunteers to Professional Police

Law enforcement in some form has been a part of nearly every civilization. Written records of laws and law enforcement dating from 5,000 years ago have been discovered by anthropologists. Since laws are nearly always made to keep things the way they are, law enforcement or police agencies have usually been formed to protect the existing social and governmental system.

### Citizen Volunteers in England

In early English history it was considered the duty of each citizen to defend King and country from both foreign invaders and local lawbreakers. In some cases, citizens were paid rewards for capturing criminals. Individuals or even entire villages could be fined for not assisting the King in enforcing the laws of the land.

As English towns grew in size, the need arose for citizens to act as law enforcement officers on a regular basis. As a result, able-bodied men began to take turns overseeing the safety of their neighbors. However, these volunteers, called *constables,* depended heavily on the aid of other citizens in maintaining the public peace. Later, towns were grouped into counties or shires. Each shire had its *shire-reeve* or sheriff who was responsible for getting the citizens of the shire to properly enforce the law.

During the 1300's, citizen volunteer groups were organized to protect the streets at night in large towns and cities. This form of policing, called the *nightwatch,* was eventually adopted in the American colonies.

### City Police Forces in the U.S.

In most American cities, law enforcement continued to be the responsibility of citizen volunteers from colonial times until the late 1800's. Often, volunteer night-watchmen carried rattles or noisemakers to warn off criminals. According to legend, this racket really was caused by the nightwatchmen themselves who "shivered and shook" from their own fear.

In 1829, Sir Robert Peel organized a force of paid law enforcement officers ("Bobbies") to patrol London. About ten years later, the first full-time day police force in the United States was established in Boston. In 1844, New York City formed a 24-hour professional police department. By 1870, most American cities had police forces patterned after those organized in Boston and New York.

At the same time that police departments were being organized in the cities, rural law enforcement was also being developed throughout the United States. Rural police forces were formed based on the old English shire-reeve system. In many parts of the country they evolved into agencies headed by *county sheriffs.*

The need for law enforcement on the frontier led to the establishment of the first *state police* force, the Texas Rangers. Later, other states established their own state-wide police forces. Today, state law enforcement includes National Guard units, Highway Patrols, Bureaus of Narcotics, Fish and Game Wardens, and Civil Defense officials. Each type of state agency has a different area of responsibility and responds to different needs.

At the *federal level*, the need to handle law enforcement matters that extend beyond state boundaries resulted in the development of the Secret Service which, among other things, protects the life of the President; the Internal Revenue Service which investigates tax evasion; and the Federal Bureau of Narcotics—all under the control of the Treasury Department. The Department of Justice, headed by the Attorney General of the United States, includes such agencies as the Immigration and Naturalization Service, and the Federal Bureau of Investigation (FBI).

The FBI operates somewhat like a national police force; however, its basic function is narrowly limited to *investigation of federal* law violations. For example, the FBI is usually involved in investigating kidnapping cases, bank robberies, and civil rights violations. The vast majority of criminal acts, however, are handled by state and local police agencies.

**Policing Today**

Unlike most countries in the world today, the United States does not have a national police agency which enforces the laws in all parts of the country. Rather, a large number of independent law enforcement agencies exist at the local, state and federal levels of government. Each agency has its own special function and is responsible for enforcing specific laws in a well-defined geographical area. For example, fire inspectors are generally responsible for the enforcement of local fire codes and health department inspectors see that a city or town's health and sanitation ordinances are obeyed. Local police enforce a state's criminal laws in the city or town they work in.

The large number of differing law enforcement agencies in the United States has both advantages and disadvantages. On the one hand, the existence of many different police organizations protects citizens from abuses which could result from the existence of one large and powerful national police force. The use of separate federal, state and local police forces also allows citizens greater access to and control of the police. On the other hand, divisions in law enforcement agencies may create problems. For example, local police may be more subject to home-town prejudices and corruption than a national police force might be, and it is administratively difficult for local, state and federal law enforcement agencies to work together.

Traditionally, Americans have been wary of national police forces. National police forces allow a few people to exercise too much power over citizens' lives. For example, in totalitarian countries, the most powerful person in the government is usually the head of police. In our own country, the potential dangers of a national police force have been illustrated by abuses of power in the CIA and FBI. Thus, it seems likely that modern policing in the United States will continue to reflect the local origins of law enforcement in England and the United States.

**New Realities**

Today, the public often views the police primarily as crime fighters. In reality, a police officer spends substantial time on a lot of other tasks within the community. Common non-crime duties of a police officer include various forms of social work, handling public protest, and medical emergencies.

To understand the police officer's function (and why police feel and act as they do), it helps to consider the pressures and fear an officer experiences in the course of performing his or her duties. These duties have become more and more complex in recent times. Many factors have contributed to this: the rise in the crime rate, the increase in possession of dangerous weapons (particularly handguns), a more critical news media, a more critical general public, and certain budgetary problems (e.g., lack of funds to hire an adequate number of officers).

***For Discussion***

1. How does the organization of police forces in the United States differ from most other countries? Why do you think these differences exist?
2. Today, some people argue that the crime problem could be better handled if there were one large police agency to enforce *all* criminal laws throughout the United States. What do you think about this argument? Why?
3. In what ways could citizens become more directly involved in local law enforcement? Is this a good idea? Why or why not?

## ▶ Police in Action/ Two Activities

What is it like to be a police officer responding to a call for assistance? Have you ever had to call the police? Have you ever visited a police station or talked to an officer about what police work is like? The following activities will help you answer all of these questions, "Yes."

### ▷ Activity One/Police Call

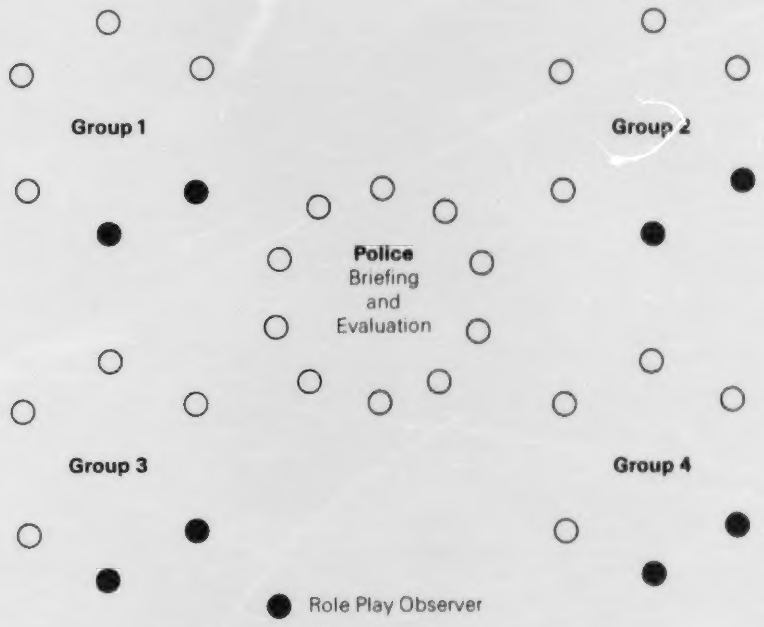
*Prearrangements:* Contact your local police department or sheriff's office and arrange in advance for a law enforcement officer to be present in your class on the day the activity is to be conducted. His or her role will be to observe the role plays and help debrief the activity from the viewpoint of actual police practices and experience. You may wish to conduct the activity over a two-day period and have the officer only present on the second day. (Also, if available, you might want to arrange to hold the activity in a large multi-purpose room or auditorium.) When conducting the activity:

1. Form the class into four groups of equal size.
2. In each small group select:
two members to play police officers;
one or two members to act as observers and group spokespersons; and
the remaining students to play the role of citizens.
3. Arrange the groups in the following manner by sending the police officers to a circle in the center of the room:
4. *Police Group Assignment*—Students taking the role of police officers should:
a. Select a patrol partner; *and*
b. Read and discuss the following "Departmental Regulations" to determine how you and your partner will conduct yourselves as a team when called upon to deal with a police call.

**Departmental Regulations**

*The Police Officer's Duty*

"As a law enforcement officer, my fundamental duty is to serve mankind, to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence and disorder; and respect the Constitutional rights of all men to liberty, equality and justice."



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*Adapted from *Police Patrol,* Constitutional Rights Foundation, Todd Clark, Editor, Zenger Publications, Inc. 1981.

On patrol, the police must try to fairly enforce society's law, be polite and courteous to citizens with whom they come in contact, follow procedures which have been established by the courts and their superiors, solve a number of problems not connected with law enforcement at all, and respond to each call quickly and efficiently.

*Cautions*

- Always be on guard to protect yourself, your partner and other citizens from attack and injury.
- Handcuff anyone you take into custody.
- Be prepared for unusual public reactions when you are present.
- Treat all people firmly and fairly.
- Treat all people equally; the law is "blind" to race, sex and religion or status.

(The visiting police officer should take part in the group's preparations at this point.)

5. *Citizen Group Assignment* (including Observers)—Assign one of the following "Police Calls" to each group. Each should then take about 10 minutes to decide how it will role-play the situations. (Be sure to act as realistically as possible. For example, how would youngsters caught shoplifting react to the store owner and the police? Passively and quietly, or loud and defensively?) Also, one member of the group should be prepared to call the police for help by giving a minimum amount of information based on the assigned Police Call. For example, "Come quick... there is a robbery in progress at Green's Drugstore."

*Observers* should read and discuss the information contained in "Observer Reports." They should also familiarize themselves with the following form to be filled out on the basis of what took place in the role play of their group.

**Observer Evaluation Form**

So that you can maintain a fair degree of objectivity, please do not participate in the discussion of your group's incident prior to the role-play.

It is your responsibility to observe the contact between your group and the police. After the incident has been fully presented, it is your job to evaluate what has happened. Use the check list to get started. Then you will present and discuss your impressions with the group.

1. *How many of the incident role-players were:* (mark the number in front of each item)

____ realistic

____ too positive and friendly to the police

____ too negative, hostile and violent to the police

____ totally unrealistic—overplayed their roles

2. *The police role-players were:*

____ realistic

____ too polite and willing to please the others

____ too negative, hostile and violent with the others

____ unrealistic—overplayed their roles

3. *From the standpoint of fairness, I believe the:*

police should have ______________________

__________________________________________

others should have ______________________

__________________________________________

4. *In real life, I believe the following would have happened:*

__________________________________________

__________________________________________

**Police Call: Group One**

*The police will be called to investigate a shoplifting incident.*

Design an incident in which a shop-keeper has reported catching a youth shoplifting, and the police are called to the scene. Keep in mind the following questions:

1. How do you think a young person feels to be caught shoplifting?
2. Should the police arrest the youth, or do something less drastic, such as taking the youth home and talking to his parents, etc.?
3. Should people report any and all crimes that they know about?
4. What else could the shop-keeper have done instead of calling the police?

**Police Call: Group Two**

*The police will observe a car full of men cruising suspiciously in a shopping district late at night.*

Design an incident in which the police stop a car that is cruising suspiciously. Keep in mind the following questions:

1. What would make the police suspicious that something is going on?
2. Do you think the police will treat the people in the car differently depending on whether they are black, brown, white, or speak no English?
3. How do you think innocent people will feel and act when they are stopped by the police?

**Police Call: Group Three**

*The police will be called to settle down a domestic quarrel between husband and wife.*

Design an incident involving a fight between husband and wife that is violent enough that the neighbors call the police. Keep in mind the following questions:

1. Considering that most murders happen in the home between people who know each other very well, do the police have a special responsibility to intervene in this kind of case?
2. Do you think the police should stay out of family affairs?
3. Since many homes have at least one gun, are the police in any danger?

**Police Call: Group Four**

*The police will be called to investigate a prowler report.*

Design an incident in which lonely, frightened old people report hearing a prowler in their apartment building complex. Keep in mind the following questions:

1. If the old people are always calling the police, and the investigation always turns up nothing, do the police have a duty to hurry to their aid, or even go at all?
2. Do you think the police have a special duty to look after the elderly in high crime areas? Think about the restrictions on manpower imposed by tighter local government budgets.
3. Do you know of any community programs or organizations that help the police in guarding the elderly against crime?

*(Note: If the class is not familiar with role playing, you may wish to conduct one of them as a model for the rest of the class to follow.)*

6. *Role Playing*—When all the groups are ready, a member from each should approach the Police Group and call for help based on the assigned Police Call. A team of police officers responds to each call. The role play may begin or be in progress as the police arrive. Role plays can be conducted simultaneously, but if noise or space are a problem, conduct them one at a time in front of the class. In either case, the visiting police officer should be prepared to comment on the role plays after observing them individually or by listening to the observer reports of what happened.

7. *Observer Reports*—When the groups have completed role-playing, each observer team should complete their forms and analyze what happened for the rest of the class. If the role play is conducted in front of the entire class, all students may wish to act as observers or compare their views with the official observers. *Be objective*. Try to describe the problems that arose and explain them in terms of citizen and police behavior. The visiting law enforcement officer should also be asked to comment on each of the role plays.

8. *Debriefing*—Conduct a class discussion involving the visiting police officer and use the following questions as a guide.

a. What have you learned about the kinds of jobs police officers are called upon to do?

b. How did you feel when you played the police officer's role? The suspect's role? The role of the citizen in need of help? The observer?

c. What other kinds of incidents have you been involved in or heard about that were not included in the simulation? How many involve violent crimes?

d. What part do you believe fear plays in the interactions between police and those subject to their authority? When do you think police officers are most afraid? What might cause police to be afraid? What causes others to fear the police?

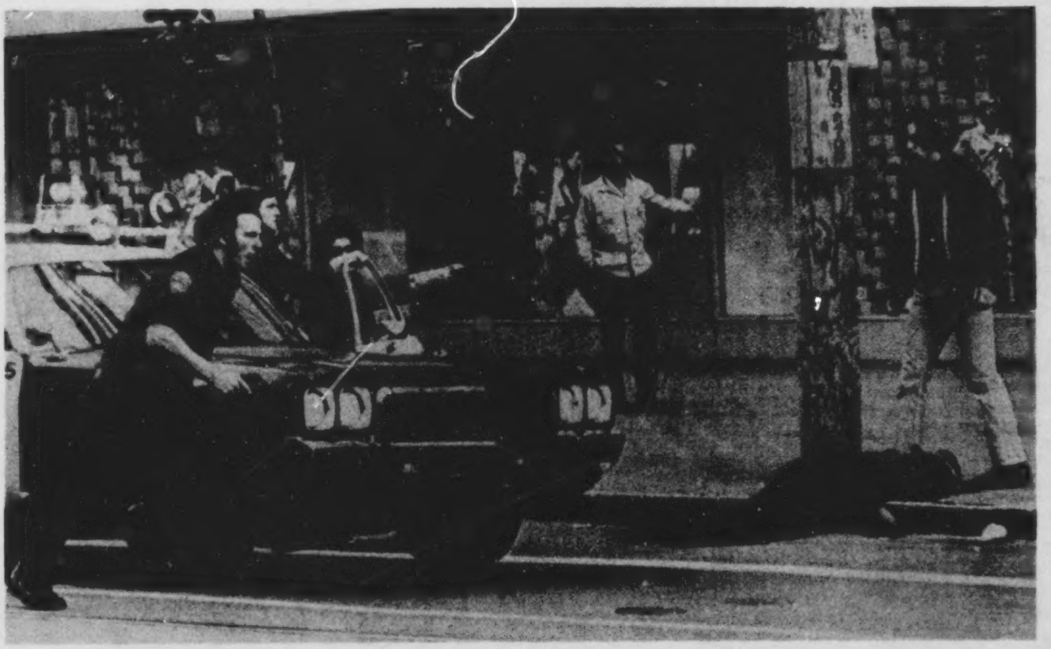
e. What effect might fear experienced by police officers have on their attitudes toward civil liberties? Politics? Suspects?

f. Does fear of the police keep people from breaking the law?

g. Try to describe the "ideal" police officer. Use examples from the game, from your own experiences, from stories you have heard.

h. Do you believe society might expect too much from the police?

As a follow-up activity, you might create additional "police calls" based on similar or typical incidents and have groups role play them for the class.



Police must be prepared to respond to the most serious emergency at a moment's notice. [UPI]

## ▷ Activity Two/ Visiting the "Blues"

For a rewarding experience and a greater understanding of their day-to-day work, arrange a visit to your local police or sheriff's department. Many departments have community relations or school-liaison officers who can help make the arrangements for classes or small groups of interested students.

Listed below are some questions you might want to ask at the police station, but feel free to make up additional questions needed to complete a brief, but fairly comprehensive, study of your local police.

- What is the population and racial composition of the area served by your police department?
- How many officers are employed (sworn personnel)?
- How many officers are on patrol during each shift? If not evenly distributed, why not?
- What special units does your department have? (Detective, Narcotics, Traffic, Vice, etc.)
- What is the salary range for officers in the department at each level? (Officer, Sergeant, Lieutenant, Captain, Inspector, Chief)
- Does the racial composition of the department mirror that of the service area?
- Does the department have special educational programs in the school and/or community?
- How much special training do members of the department have in community relations and what does it consist of?
- Does the department welcome visitors, maintain a "ride-along" program for adults and/or teenagers or otherwise encourage citizen education regarding the police function?
- What are the most common problems that officers are called upon to handle?
- What police calls tend to be the most dangerous?
- What is the procedure for filing a citizen complaint about the conduct of a police officer?
- What is the policy of the department regarding the use of guns?
- Does the department have any special policies for supervising areas where youth "hang out" (arcades, shopping centers, etc.)?

Did you know your rights under the law of search and seizure? [UPI]

## The Law of Search and Seizure

As you have discovered, a good police officer must wear many hats and know many things. Part authority figure, bureaucrat, soldier and psychologist, he or she must know police science and investigation techniques, departmental regulations and procedures, and have a background in human relations. Further complicating a police officer's life is the need to have a good working knowledge of criminal law and procedure. After all, you must know the law to be able to enforce it. Unlike lawyers and judges who have years of legal training and make decisions in offices, courtrooms or chambers, a police officer must recognize, interpret and apply the law in the field, often under adverse circumstances. This is no easy task.

Criminal justice has two branches: law (which you studied in the preceding unit) and procedure. *Criminal law* deals with questions such as what acts we punish people for and what we hope to gain from punishment. *Criminal procedure* deals with the way in which the criminal justice system works. A police officer must know both.

The system is torn between two conflicting goals: protecting society from those whose behavior is unlawful, and insuring that those who are arrested, prosecuted or convicted of crimes receive every constitutional protection to which they are entitled. Criminal procedure also deals with arrest procedure, restraint on police activities, trial procedure, and other constitutional guarantees of due process.

Laws relating to criminal procedure come from a variety of sources including federal and state statutes and case decisions (sometimes called "judge-made" law). This body of law is created by appellate court decisions which interpret the federal and state constitutions and these laws produce rules that criminal trial courts must then follow. The police must pay close attention to these decisions. Otherwise, a case against a criminal defendant may be jeopardized by following investigation or arrest procedures which do not meet current judicial standards.

As the highest appellate court in the land, the U.S. Supreme Court is often called upon to determine questions about whether a given rule of criminal law or procedure meets federal constitutional standards. Over the last 25 years or so, the Court has been very active in this area. By its interpretation of the fourth, fifth, sixth, seventh and fourteenth amendments, new dimensions in criminal procedure law have evolved.

### Searches and Seizures

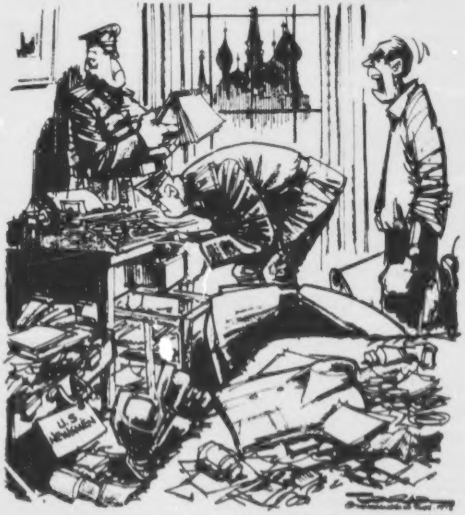
One of the most important and complex areas of criminal procedure is derived from the Fourth Amendment. The Amendment has a great impact on how police officers investigate crimes and gather evidence for use in criminal proceedings. This is because the U.S. Supreme Court has ruled that evidence which is unreasonably seized may not be used at trial. The Fourth Amendment provides:

> *"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

These few words may sound simple, but they are not. Through interpretation of the Amendment in specific cases by the U.S. Supreme Court and lower federal and state courts, they have evolved into a full body of law known as the law of search and seizure.

How is the constitutionality of a search or seizure determined? By using the following checklist and understanding the legal considerations that go with it, you will be able to form an intelligent opinion about the legality of most search and seizure situations.

"WHERE DO YOU GUYS THINK YOU ARE ....AMERICA?"



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## A Search and Seizure Checklist

| | *Major Questions* | *Considerations Checklist* |
|---|---|---|
| I. | Has a "Search and Seizure" taken place? | • Did a *government employee or agent* conduct the search or seizure?<br>☐ Yes<br>☐ No<br>Explain: ______________________<br>• Was it a "search" or "seizure" under the Fourth Amendment *as defined by the courts?*<br>☐ Yes<br>☐ No<br>Explain: ______________________<br>[If YES to both items, consider the following:] |
| | (If YES) | |
| II. | Was the "Search and Seizure" reasonable? | • Was the search or seizure conducted with a valid warrant?<br>☐ Yes<br>☐ No<br>Explain: ______________________<br>[If YES, rights under the Fourth Amendment have not been violated.]<br>• If not, does one of the court recognized exceptions to the warrant requirement apply?<br>☐ Motor Vehicles<br>☐ Incident to a lawful arrest<br>☐ "Stop and Frisk"<br>☐ Border Searches<br>☐ Consent<br>☐ "Hot Pursuit"<br>☐ Emergency Circumstances<br>☐ Airline/Security Searches<br>Explain: ______________________<br>[If YES, rights under the Fourth Amendment have not been violated.] |

## Has a Search and Seizure Taken Place?

**Did a government employee or agent conduct the search or seizure?**

The first step in analyzing search and seizure problems is determining who conducted the search and/or seizure. The Fourth Amendment protects citizens from actions by *officials* or *agents* of the government. Actions by private individuals are not generally covered by the Fourth Amendment. If, for example, someone you know was to break into your house, find evidence of a crime and turn it in to the police, your rights under the Fourth Amendment would not have been violated. If you were prosecuted for the crime that the evidence was related to, the evidence could be used against you at trial. (Note, however, that if a private citizen acted at the request of the police in conducting a search or seizure, he or she would be considered an agent of the government and Fourth Amendment protections *would* come into play.) Of course, the police could also arrest the person who broke into your house for burglary and you could sue him or her in civil court for trespass if you suffered any damages.

**Was it a "search" or "seizure" under the Fourth Amendment as defined by the courts?**

The Fourth Amendment protects people from unreasonable searches and seizures of their "persons, houses, papers and effects." But what is a "search"? What is a "seizure"? The next consideration is to decide whether a government official's conduct amounted to a search and seizure.

In the landmark Supreme Court case of *Katz v. United States* (389 U.S. 347, 1967), a "search" was defined as any governmental intrusion into something in which a person has a *reasonable expectation of privacy*. This privacy interest covers real property and personal belongings including places and things such as houses, yards, garages, apartments, diaries, briefcases and mail.

The courts have held, however, that there is no reasonable expectation of privacy in places or things that are in "plain view." For example, a person growing a four-foot high marijuana plant in a front bay window cannot claim that a search was conducted if a police officer spots it from the street. However, the officer who detects things in "plain view" must do so from a spot in which he or she has a legal right to be. For instance, if an officer climbs over a six-foot fence surrounding a yard and spots marijuana growing in some back corner, a search has taken place. (A person has a reasonable expectation of privacy in his or her private property which cannot be seen except by trespassing.)

A similar rule applies to property which has been permanently abandoned by the owner. For example, if a person threw out letters which contain incriminating statements, the police could retrieve them from the garbage dump without having conducted a "search." There is no reasonable expectation of privacy in such items.

The idea of "seizure" is somewhat easier to understand. A seizure is any taking into possession, custody or control. An arrest is one form of seizure. This is because in making an arrest, the police take someone's person into custody. For this reason, arrests fall under the requirements imposed by the Fourth Amendment.

***For Discussion*** (See answer section.)

1. Do you think it is fair that the Fourth Amendment protects only against intrusions by the government? Why? What possible problems could result?
2. For each of the following, decide whether a "search" and/or "seizure" has taken place and explain why or why not. (Don't be concerned whether or not it was "reasonable" [legal].)

a. Mark Weylon, an off-duty police officer, arrests Mary Clark for shoplifting.

b. Lois Kindel, a custodian at the Shadyville Police Department, offers to search her neighbor's trash cans in the alley behind her home for evidence of chemicals used in the making of illegal drugs and finds some empty containers.

c. Officer Sanchez climbs a hill in a public park and spots three stolen cars in a nearby backyard surrounded by a ten-foot high fence.

d. On surprising George Meyers, a known narcotics dealer, police observe him swallow a number of capsules. They take him to the hospital and have his stomach pumped.

e. The police stop Anna and question her for a few minutes about where she's been and what she has been doing the past few days. (Anna has been arrested twice in the last year for prostitution but has never been convicted.)

3. *Group Research Activity:* Divide the class into groups of six. Working in your groups, decide if a "search" or "seizure" has taken place in the following factual situations and explain why. Each member of the group is then responsible for a different case. Visit a law library and look up the cases cited for each situation. Law

libraries can be found at law schools and in county and municipal court facilities. (The librarian can help you find the cases you are looking for.) Report your findings back to the group.

a. The FBI listens to Joe's conversations by attaching an electronic eavesdropping device to the outside of the public telephone booth he uses at 11:00 a.m. every day.

b. An officer enters an unlocked apartment building and, by listening outside of a thin door, hears Suzanne's conversations inside her apartment.

- See *United States v. Llanes,* 398 F.2d 880 (2d Cir. 1968)

c. An officer goes up a metal fire escape attached to the outside of a building and, from the fourth floor landing, looks in a window and sees marijuana.

- See *Cohen v. Superior Court,* 5 Cal. App. 3d 429 (1970) and *State v. Clarke,* 242 So. 2d 791 (Fla. App. 1970)

d. An officer shines a light through an eight-inch slit in a garage door into the dark interior of the garage. He sees nothing.

- See *United States v. Wright,* 449 F. 2d 1355 (D.C. Cir. 1971)

e. The police use a specially-trained dog to sniff for the smell of illegal drugs in bus station lockers.

- See *United States v. Fulero,* 498 F. 2d 748 (D.C. Cir. 1974)

f. The police put an electronic tracking device called a "beeper" onto the bottom of a motorcycle while it's parked in a public place. Then they monitor the owner's movements for several days.

- See *United States v. Moore,* 562 F. 2d 106 (1st Cir. 1977) and *United States v. Holmes,* 521 F. 2d 859 (5th Cir. 1975) *aff'd en banc* 537 F. 2d 227 (1976)

## Is the Search and Seizure Reasonable?

### Was the search or seizure conducted pursuant to a valid warrant?

In general, the courts have held that a search *or* seizure is unreasonable unless it has been authorized by a valid warrant. A warrant is a court order issued by a judge or magistrate who believes that it is necessary to search a person or place, make an arrest, or seize evidence of crime. Before the warrant is issued, there must be evidence presented under oath—usually supplied by a police officer—that there is *probable cause* (good reason) to believe that a crime has been or is about to be committed, and the person, place or thing to be searched or seized is related to that crime. Warrants must specificaly describe the place to be searched and the person or thing to be seized.

Once the police officer has a search warrant, he or she must carry out the search promptly (usually within 72 or 96 hours after the warrant is issued, depending on the state). Some states have laws which limit the time of day that police may execute warrants. Also, there are "no-knock" statutes in some jurisdictions which allow the police to forcibly enter a place to execute a warrant when no one will let them in and police have reason to believe that a fugitive is hiding out or evidence is being destroyed.

### If no warrant is obtained, does one of the court recognized exceptions to the warrant requirement apply?

The courts have long recognized that the police can't be expected to obtain a warrant before every search and seizure (though probable cause is still required in all cases). A number of exceptions to the warrant requirement have thus been created over the years. These exceptions are designed to protect the safety of the officers and the public, to insure that evidence will be seized before it can be hidden or destroyed, or to aid in the apprehension of suspects or prevent their escape. In determining the reasonableness of a warrantless search or seizure, the courts must balance the need for immediate action by the police against the invasion of individual privacy that is involved. Here is one recent case.

**United States v. Ross***

Late one evening, an informant (who had previously proven to be very reliable in his dealings with the police) telephoned Detective Marcum and told him that an individual known as "Bandit" was selling drugs which he kept in the trunk of a car parked at 439 Ridge Street. The informant told Detective Marcum that he had just seen Bandit complete a sale of the narcotics and that Bandit had told him that there were more where those had come from in the trunk. He gave the detective a detailed description of Bandit and described the car as a maroon Chevrolet Malibu.

Detective Marcum, along with two other police officers, immediately drove to the area and found a maroon Malibu parked in front of 439 Ridge Street. A license check disclosed that the car was registered to Albert Ross; a computer check on Ross revealed that he fit the informant's description and was known to use the alias "Bandit." The officers cruised through the neighborhood twice, but did not see anyone matching Ross' description. To avoid alerting people on the street, they left the area for awhile.

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*102 S. Ct. 2157 (1982)

The officers returned five minutes later and saw the maroon Malibu turning off of Ridge Street onto Fourth Street. They pulled alongside the Malibu, noticed that the driver matched the informant's description, and stopped the car. They ordered Ross to get out of the car and, while two of the officers were searching him, Detective Marcum discovered a bullet on the car's front seat. Marcum took Ross' keys and opened the trunk, where he found a closed brown paper bag. He opened the bag and discovered a number of cellophane envelopes containing white powder.

Later, at the police station, the officers thoroughly searched the car again. In addition to the brown paper bag that they found earlier, they discovered a red leather pouch in the trunk. They unzipped the pouch and found $3,200 in cash. The police laboratory later determined that the powder in the cellophane envelopes was heroin. Ross was charged with possession of heroin with intent to distribute.

No search warrant had been obtained at any time, and Ross claimed the searches were unreasonable. He made a motion to suppress the heroin and the cash from evidence at his trial.

### *For Discussion*

1. Did Detective Marcum's opening of Bandit's car trunk constitute a "search"? What about the brown paper bag? The cellophane envelopes? Explain your answers.
2. Assume that opening the trunk, the brown bag and cellophane envelopes *were* searches. Do you think they were "reasonable" under the circumstances or should the officers have secured a warrant first? Why?
3. Was the unzipping of the red leather pouch at the police station a search? If so, was it "reasonable" under the circumstances or should the officers have obtained a warrant first? Why?

### *United States v. Ross:* The Decision

In a 6–3 decision, the U.S. Supreme Court ruled that the searches and seizures were reasonable and did not violate Mr. Ross' Fourth Amendment rights. Police officers who have legitimately stopped an automobile (as they did in this case) and who have probable cause to believe that contraband is concealed somewhere within it (as they did in this case) may conduct a warrantless search of the vehicle *as thoroughly as if a judge or magistrate had authorized it by warrant.* In these types of cases, the Court declared, a search is not unreasonable if it is based on objective facts that would justify the issuance of a warrant, even if no warrant has actually been obtained.

In addition, where the police have probable cause to search an entire vehicle, they may conduct a warrantless search of *every part of the vehicle and its contents.* This includes all containers and packages which may conceal whatever it is they are searching for. The scope of these searches is not defined by the nature of the container in which the contraband is hidden. Rather, it is defined by the object of the search and the places in which there's probable cause to believe it might be found. (For example, probable cause to believe that undocumented aliens are being transported in a van won't justify a warrantless search of a suitcase in the van.)

Justice White argued in dissent:

"The majority . . . not only repeals all realistic limits on warrantless automobile searches, it repeals the Fourth Amendment warrant requirement itself. By equating a police officer's estimation of probable cause with a magistrate's, the Court utterly disregards the value of a neutral and detached magistrate . . .

". . . The Court simply ignores the critical function that a magistrate serves. And although the Court purports to rely on the mobility of an automobile and the impracticability of obtaining a warrant, it never explains why these concerns permit the warrantless search of a *container,* which can easily be seized and immobilized while the police are obtaining a warrant."

Justice Marshall disagreed with the decision as well. In his dissenting opinion, he warned that the majority ruling would have "profound implications for the privacy of citizens traveling in automobiles." What do you think Justice Marshall meant by the statement?

The *Ross* case is generally viewed as having been the final step in the carving out of a clear-cut exception to the Fourth Amendment warrant requirement in cases of *motor vehicle searches.* The rationale behind the exception is this: because it is easy to remove motor vehicles from a jurisdiction or take them somewhere quickly to conceal or destroy any contraband or evidence they may contain, it places too heavy a burden on law enforcement to require officers to stop and get a warrant before searching them. (Of course, there must still be probable cause to believe it was used in the commission of a crime or contains evidence of a crime.)

**Other Recognized Exceptions**

There are other situations in which searches and seizures may be conducted without a warrant:

- In *Chimel v. California,* 395 U.S. 752 (1969), the U.S. Supreme Court held that searches and seizures *incident to lawful arrests* need not be authorized in advance by a warrant. Said the Court: "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape [and to] seize any evidence on the arrestee's person in order to prevent its concealment or destruction." These so-called *"Chimel* searches" may extend to everything within the area of the arrestee's immediate control. Questions sometimes arise as to whether the arrest itself was lawful. If it was not, any search conducted along with it would not be valid.

**Examples**

*Reasonable Search:* Didi is arrested outside of Elliot's Department Store for shoplifting. The police (without a warrant) search the bookbag and shopping bag she is carrying.

*Unreasonable Search:* Didi is arrested outside of Elliot's Department Store for shoplifting. The police go to her home (a block away) and search her bedroom. (The search is not "incident to" the arrest and the police could have obtained a warrant if they had probable cause to believe there was evidence of a crime in the house.)

- In certain cases, the police may *stop and* frisk, or pat down, the outer layers of a person's clothing without necessarily making an arrest. "[W]here a police officer observed unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be *armed* and *presently dangerous.* . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing in an attempt to discover weapons which might be used to assault him." *Terry v. Ohio,* 392 U.S. 1 (1968); 88 S. Ct. 1868. Emphasis added.

**Examples**

*Reasonable Search:* The police see Fritz run out of a dark alley at 3:00 a.m. They stop him, ask him who he is and what he has been doing, and frisk his outer clothing. In doing so, the officers detect what feels like a large metal object in his coat pocket. They reach inside and pull out a gun.

*Unreasonable Search:* The police see Fritz run out of a dark alley at 3:00 a.m. They stop and frisk him. In doing so, the officers detect what feels like a plastic bag in his coat pocket. They reach inside and pull out a small bag of marijuana. (Because of the nature of the object, it could not possibly have been a dangerous weapon.)

- The police may search without a warrant if the person "knowingly and voluntarily" *consents.* (However, these searches are not "reasonable" if the police use deception or fraud to gain the person's consent.) Sometimes an individual may consent to a search of someone else's property if the consenting party owns or shares the property with the one being searched.

**Examples**

*Reasonable Search:* The police stop Luis on the highway for driving with a broken brake light. They ask him to open his glove compartment for them. Luis opens it and the officers look inside.

*Reasonable Search:* The police (without a warrant) go to Meg's house and ask her parents if they can search her room for illegal drugs that they believe she has been selling at school. Meg's parents let the officers in to search.

*Unreasonable Search:* Mike and Murray are roommates in a two-bedroom apartment. The police go to their apartment and ask Mike to let them search Murray's bedroom and file cabinet. Mike consents to the search. (Though they share the common areas of the apartment, Mike has no right to consent to a search of Murray's private space.)

- Police in *hot pursuit* of a criminal do not need a warrant in order to enter a place that they saw the suspect go.

**Examples**

*Reasonable Search:* The police see Josie knock down an old lady, hit her with a lead pipe and take her purse. They chase Josie into a building about a mile away and see her run into apartment #10B. When she refuses to answer, the officers kick down the door.

*Unreasonable Search:* Mrs. Thackaberry reports that someone broke into her mailbox and stole her social security check. The police suspect Josie, a known robber of the elderly. They trail her for a few days and finally follow her into an apartment building where she often goes. The police knock on the door to #10B, but

Baggage searches at customs are a recognized exception to the warrant requirement. [UPI]

Josie won't let them in. The police kick down the door. (There is no "hot pursuit" in this case. The police were only following a lead and could have gotten a warrant.)

- In *emergency situations* the police do not need a warrant to conduct a search or seizure.

**Examples**

*Reasonable Search:* An officer on the beat hears a woman's loud screams and the sound of shattering glass coming from the Collin's trailer home. He radios for help, then opens the front door to see what is happening.

*Unreasonable Search:* The police are concerned about violent gang activity at Jackson High School. Three students have been killed already. The police hear that a fight between two rival gangs is supposed to take place on Friday. The day before, they ask the principal of Jackson High to assemble all of the students in the gym. The officers (without a warrant) then open all of the lockers with a passkey in search of dangerous weapons. (The police are not reacting to an immediate emergency.)

- A number of other kinds of searches have been held to be reasonable by the courts. They include:
  - *Airline searches* of passengers and carry-on baggage by means of metal detectors or physical pat-downs.
  - *Border searches* by immigration control officers within areas reasonably close to U.S. international boundaries.
  - *Customs searches* at borders, ports and international airports by U.S. Custom Agents.

**Activities:**

1. As you can see, the law of search and seizure is quite complex. How do police officers learn about the Fourth Amendment limits on their actions? Invite a police officer to your class to explain his or her training in this area of the law, or make arrangements to visit your local police training academy and sit in on a class about search and seizure.
2. Interview a police officer to find out about his or her views on search and seizure law. Ask whether he or she thinks the courts have properly balanced the interests of individuals and law enforcement in search and seizure cases. Write a short summary of the officer's answer and discuss it with the rest of the class.
3. *Applying the checklist:* Using the checklist on page 56 and what you have learned about search and seizure law, analyze the following cases and decide if any Fourth Amendment vio-

lations have occurred. Be prepared to explain your answers and discuss any differences of opinion that may arise.

- Smith and Houston, special investigators from the district attorney's office, had been following Hans Metcalf, a suspected bookie. They saw him enter a telephone booth with a briefcase in his hand and make a short call. He then left the phone booth, but without his briefcase. Smith and Houston rushed to the phone booth, opened the briefcase, and found several bundles of betting slips. Just then, Metcalf returned to retrieve his briefcase and he was arrested.
- Marian Krensy was angry with her roommate, Vivian Madison. She went to the police and offered to show them where Vivian was hiding 50 stolen holiday turkeys. The police accompanied her to the garage both women shared and discovered 50 turkeys reported stolen from the Henderson Poultry Company. The police confiscated the poultry and placed Vivian under arrest.
- Officer Hanano was on patrol late at night. Suddenly, she spotted a house trailer sitting behind, but not attached to, a car with no license plates. On closer inspection, she noticed a thin wisp of smoke escaping from one of the trailer windows. She walked to the door and knocked a few times. A voice called back: "Go away!" The officer forced open the door and found a young man preparing a liquid substance in a makeshift laboratory. Officer Hanano arrested the man for the manufacture of illegal drugs.
- Acting on an informant's tip that Betty Clark was receiving stolen property, Detective Krebs went to her apartment to talk to her. She invited him in, but when he started to poke around the living room she screamed, "I said you could talk, not search the place. Get out!" He grabbed her, put handcuffs on her, then frisked her. He found a scout knife in her pants pocket and arrested her for disturbing the peace and carrying a concealed weapon. He then searched the living room and found a stolen stereo receiver.

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POLICE
POLICE

A police officer demonstrates techniques for arresting a suspect. [UPI]

## You and the Police

At some time, you may be questioned by the police, and perhaps arrested. It might be because of your conduct, or just because you happen to be in the wrong place at the wrong time.

It is important to remember that the police work for you as a citizen of your community, whatever your age, race or job. The police must respect your rights, and you in turn can help them if you respect their job.

### If You Are Questioned by a Police Officer

1. Give your name and address, or show an I.D. Remember that anything else you say can be used against you. It is not a crime to refuse to answer a police officer's further questions.
2. Ask if you are under arrest. If so, you have the right to know the charge against you.
3. The police may search you for concealed weapons by patting your clothing. Do not physically resist. Make it clear that you do not agree to any search of yourself, your car, or your surroundings.

### If You Are Arrested or Held

1. Never run away, strike an officer, or physically resist, whether you are innocent or guilty.
2. You have the right to remain silent. Be sure to use it. Tell the police nothing except your name and address. Don't give explanations or stories or try to excuse your conduct. Don't engage in "friendly" conversation.
3. Ask to see a lawyer immediately. If you can't pay for a lawyer, you have the right to free legal service. Ask the police to get you a lawyer. Don't talk to officials unless your lawyer is with you.
4. You can protect your right against unlawful search by making it clear that you do not consent to any search. The police may search you or your surroundings anyway. Do not physically resist. You can question the legality of the search in court. If the police say that they have a warrant, ask to see it.
5. After arrest, use your right to make a telephone call to a relative, trusted friend, or attorney, who can then arrange bail. If you are under 18, you may be denied bail or telephone calls. Ask to see a lawyer. Sometimes you can be released without bail, or have bail lowered. Ask the judge about it. You generally have the right to go into court the next court day after your arrest, although the law may differ for minors.
6. Don't make any decisions in your case until you have talked to a lawyer and understand what your choices are.

## Interrogation and Confessions

Another source for the right to privacy is the Fifth Amendment. Part of this Amendment says "(no) person ... shall be compelled in any criminal case to be a witness against himself ... ." This means that unless you *agree* to talk to the police, they can't force you to answer questions about a crime they think you are involved in. Perhaps the most famous case in this area is *Miranda v. Arizona,* decided in 1966. In this case, Ernesto Miranda was arrested at his home and taken to a police station. A witness identified him, then two detectives took him into a special room. After two hours of interrogation (questioning), the officers left the room. They took with them a written confession, signed by Miranda.

At his trial, Ernesto Miranda was convicted of kidnapping and rape. He was sentenced to 20 to 30 years in prison. But he had never been told of his right not to talk to the police. He had never been told of his right to a lawyer. These rights are guaranteed by the Fifth and Sixth Amendments. When the Supreme Court heard this case, they decided that any interrogation is unconstitutional unless the police clearly tell suspects before any questioning begins:

- that they have the right to remain silent
- that anything they say may be used against them in court
- that they have the right to a lawyer
- that if they can't afford a lawyer the court will appoint one before any questioning if they so desire.

Also, once these warnings are given, the police can't go on with the interrogation unless the suspect "knowingly and intelligently waives" (gives up) his or her rights. That is, suspects must completely understand their rights before they can give them up.

The significance of this important decision was that if a suspect was not given these warnings after his arrest and before he was questioned by the police, nothing that he said could be introduced as evidence against him at his trial.

It was the opinion of the Supreme Court that the questioning by police of suspects in the station house was *inherently coercive.* In other words, the Court felt there was tremendous pressure put on suspects to say what the police wanted them to say just because of the nature of the station house surroundings and of the police interrogation. The Court felt that this violated a suspect's *due process* rights, guaranteed by the Fourteenth Amendment. The Court was afraid this pressure would cause innocent people to admit to acts they never committed. It felt that the only way to prevent this was to make sure the suspects knew that they did not have to say anything to the police, and that they could have their lawyers with them whenever they were questioned.

Recently, the Court interpreted the Fifth Amendment again, this time defining just what is meant by "police interrogation" once a suspect has invoked his/her Miranda rights. The High Court defined interrogation of a person who is in custody as "words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response." In that case (*Rhode Island v. Innis,* 446 U.S. 291, 100 S.Ct. 1682, 1980), police officers made some offhand comments to the defendant as they drove him in their patrol car to the police station. One of the policemen mentioned that it would be too bad if children attending a nearby school for the handicapped found the abandoned shotgun that Innis had supposedly used to rob one taxi driver and kill another. Innis, who had already been read his *Miranda* rights three times, spoke up and directed the officers to the gun (a major piece of evidence important in his later conviction for robbery and murder). The Court ruled that the officers' remark did not violate Innis' Fifth Amendment right not to incriminate himself.

***For Discussion***

Read the case below and answer the questions that follow:

> The police brought in Michael, a 16-year-old boy accused of murder, for questioning. At the time he was taken into custody, Michael was on probation and had a record of several previous offenses. Two policemen read Michael his *Miranda* rights before they began to interrogate him. When asked if he wanted a lawyer to be present at the interrogation, Michael asked instead if he could call his probation officer. When the police told him they would not call the probation officer right away, Michael agreed, somewhat reluctantly, to talk and eventually incriminated himself in the murder.

1. Do you think Michael's Fifth Amendment rights were violated? Why or why not?
2. In court, Michael's attorney argued that the request for a probation officer was the same as a request for a lawyer. Both were persons who could be trusted, confided in and relied upon for advice. If this were so, Michael's request would

have amounted to an invocation of his right against self-incrimination. If you were the prosecuting attorney in this case, how would you respond to this argument?

3. A brief description of the Supreme Court decision in this case can be found on page 214. Do you agree with the Court's rationale? Why or why not?

## The Exclusionary Rule

"Criminals always get off on technicalities." You have probably heard this before or even thought it yourself. But do you know what these "technicalities" are? Generally, they refer to the individual rights protected by the Constitution, particularly in the provisions of the Fourth and Fifth Amendments. When these rights have been violated by an illegal search, seizure, or interrogation, an accused person may invoke the *exclusionary rule*. This is done by making, in court, a *motion to suppress* any illegally obtained evidence.

The exclusionary rule is a special remedy created by the courts to compel police to respect the requirements of the Constitution. Under the rule, no evidence (whether papers, objects, or verbal testimony) can be admitted in a court of law if it was acquired as a result of illegal actions by law enforcement officers. This does not mean that the accused person will automatically be set free. However, in many cases it becomes almost impossible for the government to prove guilt beyond a reasonable doubt without that evidence. Thus, the charges may be reduced or dropped altogether.

The exclusionary rule is based upon two theories:

- *"The fruit [incriminating evidence] of a poisonous tree [illegal search, seizure or interrogation] is as poisonous as the tree itself."* The idea here is that the "rewards" of an activity marked by injustice are themselves tainted and unjust. How can citizens respect our judicial system if the system accepts unjust practices and is itself unjust?
- *The only effective way to enforce the provisions of the Constitution is to remove any incentive to disregard them.* If illegally-obtained evidence may not be introduced in court, there is less reason for the police to engage in activities that violate people's constitutional rights.

The rule has applied to federal criminal cases since 1914. In the 1960's, the U.S. Supreme Court held that the rule applied to state criminal cases as well. The following excerpts taken from Supreme Court opinions are extreme examples of the kind of police actions the Court faced when it established the exclusionary rule.

***Mapp v. Ohio,* 367 U.S. 643, 81 S. Ct. 1684 (1961)**

[In 1957, Cleveland police officers arrived at Miss Mapp's house looking for a person connected with a recent bombing. They had information the person may have been hiding in the house, but had no search warrant. When they arrived at the house, Miss Mapp would not let them in without a search warrant.]

. . . The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. It appears that Miss Mapp was halfway down the stairs from the upper floor to the front door when the officers, in this highhanded manner, broke into the hall. She demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Running roughshod over appellant, a policeman "grabbed" her, twisted [her] hand," and she "yelled [and] pleaded with him" because "it was hurting." Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. They also looked into a photo album and through personal papers belonging to the appellant. The search spread to the rest of the second floor including the child's bedroom, the living room, the kitchen and a dinette. The basement of the building and a trunk found therein was also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial, no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best, "There is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home." ...

**Brown v. Mississippi, 297 U.S. 278, 56 S. Ct. 461 (1936)**

"... The crime with which these defendants, all ignorant negroes, are charged, was discovered about one o'clock p.m. on Friday, March 30, 1934. On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the defendants, and requested him to accompany them to the house of the deceased, and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was tied to a tree and whipped, and still declining to accede to the demands that he confess, he was finally released and he returned with some difficulty to his home, suffering intense pain and agony. The record of the testimony shows that the signs of the rope on his neck were plainly visible during the so-called trial. A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him, and departed with the prisoner towards the jail in an adjoining county, but went by a route which led into the State of Alabama; and while on the way, in that State, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail."

***For Discussion***

Critics of the exclusionary rule believe that too many dangerous criminals go free because of police errors. In recent years, a variety of proposals have been set forth to address this problem. They include:

- Abolishing the exclusionary rule and allowing all relevant evidence to be used in court;
- Abolishing the exclusionary rule but establishing other civil and criminal remedies for citizens when the police violate their rights (e.g., a person could bring a civil suit against the officer for invasion of privacy in cases of unreasonable searches and seizures.)
- Creating a "good faith exception" to the exclusionary rule for situations where the police act in "good faith" and in the reasonable—although mistaken—belief that their actions were authorized.

1. Proponents of changes in the exclusionary rule claim that they are necessary to prevent criminals from avoiding punishment and going back onto the streets when police make "technical" violations of the law. Opponents, such as the American Civil Liberties Union, argue that the change would encourage large-scale lying and oppression by the police. Which of these positions do you agree with? Tell why and explain your answer.
2. Are there any other alternatives to this problem that would respect people's Fourth and Fifth Amendment rights *but* not place too heavy a burden on law enforcement?

## Use of Force

In the last section, you read about important *constitutional* limitations on police power. There are also state laws and local police department regulations which regulate the police and the ways in which they carry out their duties.

One special concern about police conduct revolves around the use of force. In giving police the authority to enforce society's laws, we must also give them the power to do so. In confronting suspected lawbreakers, some of them violent, desperate and armed, police must have the means to protect themselves and the public. For this reason, police officers are armed with deadly and non-deadly weapons and are thoroughly trained in their use. They are also taught hand-to-hand self-defense techniques and methods for subduing people without injuring them.

That police officers are permitted to use force is one thing; *how much force should be used in a particular case is quite another matter.* As a general rule, police are permitted to use whatever level of force is reasonable and necessary under the circumstances of a particular situation. For instance, shooting an unarmed person who has stolen an apple from a fruit stand would not be reasonable. Clubbing a suspect with a nightstick where a simple arm hold would suffice is not necessary.

As a basic component of training programs, police officers are taught and practice matching the level of force they use to the circumstances they encounter. For each situation—be it an arrest, crowd control, or citizen confrontation—they are taught to begin with the lowest level of force possible. The level of force is only escalated if the facts require it. For example, if a suspect quietly submits to an arrest, a simple "pat down" search and handcuffing is all that is necessary. However, if the suspect suddenly throws a punch, a higher level of force is probably required, such as using a physical restraint technique. All of this works well in theory. On the street, other factors—including fear, anger, darkness and split-second changes—can make deciding what force is reasonable and necessary much more difficult.

Police use of "deadly force," especially firearms, is often highly publicized and controversial. Deadly force is commonly defined as "force that poses a high risk of death or serious injury to its human target, whether or not death or serious injury actually result." Laws governing the use of deadly force are found in state criminal codes. Some police agencies and departments have even stricter standards for their officers. The following factors are among those used in determining whether the use of deadly force is justified, depending on the situation:

- The officer is making an arrest for a *felony* violation (in general, deadly force is not justified in trying to apprehend a person suspected of committing a misdemeanor or lesser offense);
- The officer has made the reason for the arrest known to the suspect;
- The officer believes that deadly force is necessary to prevent his or her death or great bodily injury or that of another person;
- The officer believes that the force employed does not create a substantial risk to innocent persons; and
- The crime involved the use of deadly force or there is a great risk of its use if arrest is delayed.

Deadly force is also permitted when an officer or guard is trying to prevent a person's escape from a jail, prison or other detention institution.

### *For Discussion*

1. Why might deciding what force is reasonable and necessary be difficult for a police officer in the field?

2. Citizen complaints about police use of force or abuse of authority do arise. Recent examples include:

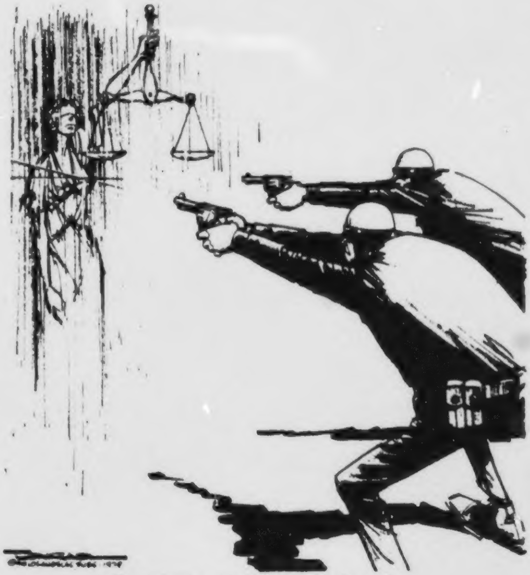
- Unnecessary use of firearms or other weapons (e.g., batons, tear gas)
- Use of dangerous restraint techniques (e.g., chokeholds)
- Strip searches
- Ill-treatment of suspects in custody
- Harassment of citizens on the street.

Search through magazines or newspapers or watch television news broadcasts to find an example of an alleged instance of police conduct. Write a brief report of the incident for the class giving both the citizen and police view of the incident.

3. *Ask the Police:* Does your police department have a written policy regarding the use of deadly force? If so, ask for a copy and see how it does or does not incorporate the basic requirements as outlined above.

If your police department does not have a written policy, interview an officer and find out what, if any, formal or informal guidelines he or she follows in the use of deadly force.

Also, for most people firearms come to mind when they hear the phrase "deadly force." Find out if other forms of deadly force are used by police in your area.



"SHE THREW HER SWORD AT US...."

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## ▶ Split Second/Class Activity

If you were a police officer in a dangerous situation, how would you respond and why? To find out, complete the following activity.

Step I: Break into teams of two students each and read the following cases. Discuss and decide how you would handle each case and how much force, if any, is reasonable and necessary. Be prepared to discuss your answers.

**Case #1: Eulia**

Eulia, a 39-year-old black woman, had a dispute with a gas company serviceman. The serviceman appeared at Eulia's home to turn off the gas because of an unpaid bill. She attacked the serviceman and struck him several times with a shovel.

At about noon that day, a police officer arrived at Eulia's home to arrest her for the aggravated assault of the serviceman. This time, Eulia began to fight with the police officer. She screamed and threw some dishes on the floor. The noise attracted several curious neighbors to her front porch to see what was going on.

The officer continued to talk to Eulia from his corner of the kitchen. Suddenly, she picked up an 11-inch knife from the counter and prepared to throw it at him.

**Case #2: Pedro**

Pedro, a tall, thin 17-year-old boy, was speeding and swerving his car back and forth between the lanes on the highway late one night. Two police officers stopped him and asked to see his drivers license. Pedro, who had obviously been drinking, became enraged and verbally abusive.

One of the officers, a 20 year veteran of the police force, attempted to handcuff him, but Pedro pushed him away, grabbed a crowbar from his backseat, and waved at the other officer. "I'll kill you if you come near me again," he screamed.

Step II: Review the following list of factors that might be taken into account by police officers when deciding how much force to use. Which, if any, went into your decision in the previous cases? Did any additional factors go into your decision? Be prepared to explain your answers to the class.

1. Suspect's sex
2. Suspect's age
3. Suspect's race
4. Suspect's demeanor
5. Suspect's height
6. Suspect's weight
7. Suspect's mental condition
8. Your weapon
9. Suspect's weapon
10. Time of day
11. Visibility
12. Location
13. Distance between suspect and you
14. Cover for you
15. Cover for suspect
16. Possibility of suspect's escape if deadly force not used
17. Presence of bystanders
18. Availability of backup
19. Number of suspects
20. Number of officers

Step III: The teacher will call on teams to report on and discuss their findings.

***Debriefing:* Class Discussion**

1. What was the minimum use of force suggested for each case? What was the maximum?
2. Considering all of the possibilities, would you modify the approach you suggested? Why or why not?
3. What factors from the list were most commonly used in making a decision? (List them on the chalkboard.) Which factors were least commonly used?
4. What additional factors might affect a decision to use force in a particular situation? Why?

*Note:* In a 1980 study, 50 police officers were asked to respond to hypothetical cases just as you did here. A majority of the officers considered the following factors important:

1. Suspect's weapon
2. Location
3. Number of suspects
4. Cover for officers
5. Presence of bystanders
6. Availability of backup
7. Distance between suspect and officer

From this study, it appeared that most officers focused on the nature of the suspect's actions and nature of location, not the suspect himself. Suspects' race, sex, height and weight, for example, did not have nearly as much bearing on the officers' decisions.*

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**Journal of Police Science and Administration*, Northwestern University School of Law, March 1981.

## ▶ The Police Board—Policing the Police

Who polices the police? What can be done about police officers who behave improperly?

Civilian complaints about police conduct are not uncommon nowadays. Complaints range from relatively minor matters such as failure to investigate promptly a citizen's report of a crime to more serious cases involving police corruption or police brutality. Some complaints result from charges of the police using "the third degree" or mistreating people who have been taken into custody. Often these kinds of complaints come from minority groups and political protestors who have little power or influence in society.

Many people wonder: Can citizens who feel a police officer has behaved improperly file complaints against him or her? The answer is *yes*. Most police departments have a set procedure for taking citizen complaints. However, methods for handling these complaints vary.

In some cities, complaints against police officers are handled by the police department itself. The charges are investigated by other police officers or by the chief of police. In larger police departments, a special section manned by special officers usually exists to investigate citizen complaints and discipline police officers who violate the law or police department regulations. These then, are the ways in which the police "police" themselves.

In recent years, the number of citizen complaints against the police has increased. As a result, many people have seen a need to give citizens more control over police behavior. Some cities have used *citizen review boards* for this purpose. These boards are composed of citizens who represent the community and who are known and respected community members. The job of a citizen review board is to investigate complaints by the public about police misconduct and recommend to the police chief what action should be taken. Citizen review boards may or may not have the power to carry out their recommendations.

Improper police conduct and the methods for investigating and dealing with it are very controversial. On the one hand, the police often feel that their job is a very dangerous one which is not easily understood by citizens. While the police admit that misconduct sometimes occurs and citizen complaints must be treated seriously, they usually argue that justice is more likely to be obtained if an accused officer is investigated by other officers who know what police work is really like. Furthermore, many police officers believe citizen controls may hamper police work and that outsiders are hostile to the police.

On the other hand, many citizens argue that unless civilians exercise direct control over police behavior, the police are likely to abuse their power. As a consequence, this argument goes, citizens will lose respect for the police—and the law.

### Procedures

Break into groups consisting of 5–6 members each. Each group will function as a Police Board of Rights whose purpose is to make decisions about possible disciplinary action to be taken against officers whose conduct resulted in complaints from citizens.

The board will deal with the same two cases, and, in each case, the Board must (1) determine the guilt or innocence of the officers involved, and (2) if guilty, decide the punishment or penalty the officer should receive. Remember, you and the other Board of Rights members are all high-ranking police officers. You have already heard the evidence for and against the accused officers and you have discussed the contents of each officer's personnel file. (A summary of the events of each case and the evidence before you is given below.)

Your job is to evaluate the evidence presented to you and decide on the guilt or innocence of the officers accused in two cases. You should review and discuss each case thoroughly with the other members of your group and make a decision by majority vote. Keep in mind that these cases have been thoroughly investigated by the Internal Affairs Division and the accused officers are fully aware of the charges against them. Use the following procedures to complete the activity.

1. When the groups are organized, select a chairperson. Read the materials on the two cases to be presented to the Board on pages 70–71.
2. Using the questions listed under "Recommendations," review and discuss each case, vote on the guilt or innocence of the officer(s) involved, and decide on an appropriate penalty, if necessary. The chairperson should record the answers to the questions and the recommendations of the group. Minority opinions should also be noted by the chairperson.

If you determine that an accused officer is innocent, you should recommend that the complaint be dropped. If you find an officer guilty, you should decide on one of the following penalties:

a. Reprimand (warning to be placed in the officer's file);

b. Suspension up to six months with loss of pay;

c. Removal from the force.

3. After making a decision, prepare a brief report discussing the reasons for your decision and be prepared to discuss them with the class.

4. ***Debriefing Questions***

a. What factors might make the job of a Police Rights Board difficult and controversial?

b. What if your group had been made up only of *citizens* concerned about police behavior? Would you have decided any of these cases differently?

### Case #1: Officers Mark Thomas and Stephen Campbell

*Description of Events:*

Mark Thomas has been on the force for 6 years and Stephen Campbell for 5 years. They are good friends. Recently, they met in a cocktail lounge about 1 a.m. Both were just off duty, but in uniform. They had five or six beers, and during that time Officer Campbell bought several drinks for one of the off-duty waitresses.

The two officers had a running joke about Officer Thomas wanting to buy Officer Campbell's gun. Campbell had brought the gun that evening with the intention of selling it to Thomas. Thomas kept offering more money than Campbell was willing to accept and the matter became a joke between them as they passed the gun back and forth under the table.

Meanwhile, Officer Thomas and the waitress had some disagreeable words because the waitress felt Thomas had insulted her. Thomas contends he did not mean to insult her and was only joking.

Later, when Officer Thomas left the lounge, he pretended he was going to steal a decorative keg of beer from the cocktail lounge. Thomas claims he was only joking and had no intention of stealing the keg. However, the waitress grabbed the keg and took it back to the bar. The waitress was very upset and Officer Campbell was unable to calm her down.

The next day, the waitress complained to the police department that two officers had been at the bar waving guns around . . . "a regular O.K. Corral without the shots fired." She also accused Officer Thomas of trying to steal the beer keg. In her written complaint she said both Thomas and Campbell were drunk.

The waitress and her girlfriend were later interviewed together by Internal Affairs Division investigators, and so could not be used to corroborate one another's stories. The parking lot attendant was not interviewed, nor were other witnesses found who could verify whether the officers were drunk. The bartender claimed the two officers were not drunk, but by law he must not serve intoxicated persons, so he would most likely claim they were sober. The waitress has a record of being under psychiatric care. All evidence indicates that she is completely sincere and truthful, however.

Three changes currently exist against the two officers. These are listed below. The recommendation of the captain in charge of these officers was 15 days suspension without pay for Thomas, and 10 days for Campbell. Both officers have appealed their case to the Board of Rights contending that the punishment is unjust and the investigation was improperly handled.

*Personnel Records:*

Officer Mark Thomas has received only one previous complaint. This was from a motorist who objected to the traffic ticket he received and said that Officer Thomas was rude and did not call him "sir" when he spoke to him. Officer Thomas' evaluation from his superiors describes him as energetic, high spirited, and a good marksman. Officer Campbell has received no previous complaints and has been found an excellent officer by his superiors.

*Recommendations:*

Based on your review of this information, do you feel that Officer Mark Thomas should be found guilty of any of the following: (1) exposing a firearm unnecessarily in public; (2) misappropriation of property (beer keg); (3) disturbing the peace? Should any penalty be applied? If so, what? Do you feel that Officer Stephen Campbell should be found guilty of any of the charges listed above? If so, what penalty should be applied in this case?

### Case #2: Officers Sam Allen and Mary McCrea

*Description of Events:*

Officers Allen and McCrea were summoned about 2 a.m. to a wealthy area of town by a resident. The resident complained of a disturbance from a loud party going on next door. The resident also stated that three people wearing black leather motorcycle jackets who apparently were attending the party had come to his door, obviously drunk. One of the three reportedly carried a kitchen knife and asked to borrow a "cup of sugar and maybe some blood."

As the officers approached the caller's house, they saw Bob Williams, 21, standing by three motorcycles. When Williams saw the officers, he joined a young girl and began walking toward the front door of the house. The officers followed Williams and ordered him and the girl to stop.

Inside the house, officers could hear the quadraphonic stereo system playing acid rock seemingly at full volume. However, the two people in front said that nearly everyone had gone home except maybe for "two or three people in the back yard." It was clear to the officers that the two were under the influence of alcohol or narcotics or both.

When asked what had been going on, the two people replied that some people had "just been listening to music" and "having a good time." The officers explained that a neighbor had called about a disturbance and someone using a knife in a threatening manner. The officers overheard the girl say, "I wonder if Dusty was at it again?"

Officers Allen and McCrea asked to speak to the owner of the house but were told that he was not at home. Then the officers asked to speak to the host or hostess and were informed that it was an open party and there was no host or hostess. The two did not know who lived at the house. They went inside leaving the officers on the front lawn.

Just then, three persons appeared from the side of the house. All were wearing black leather motorcycle jackets. Officer Sam Allen ordered the group to halt. He and Officer McCrea approached them. The trio was somewhat belligerent and said they knew nothing of the matter when questioned about the neighbor's call.

Officer Allen asked for their names. One of the group identified himself as Dusty Adams. The officer asked the group to remain until they could be identified by the complaining neighbor. They refused and said they were going to leave. At this point, Officer Allen ordered the three to stand spread-eagled with their hands on the stone wall next to the driveway. All of them began to curse.

While Officer McCrea held her gun, Officer Allen began to frisk the group. He found a kitchen knife in the boot of one. As he searched the second man, Dusty Adams turned saying, "Hey, man, listen, you don't want any trouble do you?" "Keep your hands to the wall or we'll shoot," said Officer Allen. Adams turned his back. Officer McCrea fired, wounding Dusty in the shoulder. No weapon was found on his person.

Subsequently, a complaint was filed against Officer McCrea charging that she overreacted and used unreasonable force. The matter was investigated by Internal Affairs which referred the matter to the Board of Rights.

Officers Allen and McCrea contended that under the circumstances they had probable cause to act as they did and probable cause to believe that Dusty Adams was reaching for another weapon when he moved suddenly and removed his hands from the stone wall. Furthermore, the officers stated that the suspects had been warned, and that under the circumstances the officers had not acted unreasonably. The captain has recommended that no disciplinary action be taken against officers Allen and McCrea.

*Personnel Records:*

Officers Allen and McCrea have been on the force for three and two years respectively. Both are highly regarded by their superiors. Neither has received any previous complaints.

*Recommendations:*

In your opinion should Officer Sam Allen and/or Officer Mary McCrea be found guilty of using unreasonable force? If so, what should the penalty be?

Police take to the skies to keep one step ahead of the criminal. [UPI]

LEX
JUSTICE
VERITAS

[CRF Photos]

# The Criminal Case

On July 6, 1983, shots rang out in a quiet residential community. A human life was taken and a suspect arrested . . .

So began the criminal case of *People v. Carter.* It is fictional, but not unlike real-life events that take place each day in cities and towns throughout the United States. There is only one important difference.

This time, you and your class will be on the scene from beginning to end . . . and not just as observers. You will step into the roles of lawyers, judges and jurors and face the issues they typically confront in a criminal case. You will study the police report, meet the defendant and hear his side of the story, help the prosecutors prepare their case, rule on motions, and select a jury. Eventually, you will see the trial itself unfold and participate in finding the truth about the events on that hot July evening. Finally, your actions and decisions will take the case to a final verdict. When you are finished, you will have experienced something most people never have: a behind-the-scenes look at how the criminal justice system handles a criminal case and the philosophies and procedures that shape it.

## The Criminal Case Process

Every year, state and federal criminal justice systems handle thousands of criminal cases. Most cases are routine: a crime occurs, a suspect is identified and arrested on a charge for which there is sufficient evidence of guilt. A trial does not take place if the defendant pleads guilty to the crime charged or to a lesser offense. Except for a vague notion that police departments are overworked, courts are overburdened and prisons are overcrowded, the general public is barely aware of the daily routine of criminal justice activity in progress.

What does capture public attention is the "big case." A sensational murder, an assassination attempt, or a multi-million dollar fraud case can make headlines in our daily newspapers for months. Reporters clamor for interviews with the prosecution and defense teams, "artists' renditions" of the day's courtroom events are featured on T.V. news shows, and the defendant's name becomes a household word.

Although these big cases are not typical, they do give us a dramatic glimpse of the criminal justice process. These cases introduce us to a mindboggling array of courthouse characters, legal terminology, procedural steps and crucial issues upon which the ultimate decision rests. At any point along the way, we might throw up our hands and mutter, "What's the point of all this . . . did he do it or didn't he do it?" Since no one can read the mind of a person accused of crime, and no one can peer back into the past to find out exactly what happened at the scene, we must use other methods to find the truth.

### The Adversary System

Central to truth-finding in our criminal case process is the so-called adversarial process. In it, opposing attorneys help neutral fact-finders (the judge or jury) learn about, sift through and decide which facts of a particular case are true. Ultimately, the fact-finder must also weigh the facts and come to a verdict.

To do this, the attorneys must be advocates. They are also adversaries. That is, they try to present facts in a light most favorable to their side and point out weaknesses in their opponents' case. Through well-planned strategies and legal arguments, they try to convince the court to see the "truth" as they do. In a criminal case, the opposing sides are the prosecution and the defense.

The basic goal of the prosecution is to protect society frcm crime by making sure the guilty are tried, convicted and punished. By filing charges against a particular defendant, the prosecutor is making a claim that the individual has committed a crime. At trial, the prosecutor must prove the claim beyond a reasonable doubt. The basic goal of the defense is to challenge the prosecutor's case by raising all reasonable doubts as to the defendant's guilt. Defense attorneys are also responsible for making sure that the defendant gets every right and benefit guaranteed under law and the Constitution.

By pitting these two sides against one another, it is believed that the truth will come out. For example, if the prosecution's case rests merely on an eyewitness identifying the defendant as the one who robbed a store, the defense might go to great lengths to question the memory or eyesight of the witness. This might be done to challenge the witness' credibility or to present the judge and jury with the defense's viewpoint about what really happened. The defense can be assured of a similar strict examination of any evidence it produces. Under the adversary system, the judge or jury must decide which version is true.

The fact-finder must go through this process with all the evidence produced at trial. Before the ultimate decision of whether a defendant is guilty or not can be determined, a lot of facts must be established and weighed. Are the witnesses believable? Are the lab tests accurate? Are the connections between the various pieces of evidence logical and supportable? What other explanations for the alleged events are possible? Indeed, the quest for truth enters into almost every nook and cranny of a criminal trial.

Because the adversarial process involves humans, it is not foolproof. Memories fail, witnesses see the same event in different ways, reasonable people differ about what is true. Sometimes, biases and prejudices arise, lies are told. In extreme cases, an advocate can go so far in trying to win that objective truth gets lost. An emotional argument could sway the jury in spite of the facts; important evidence could be concealed.

To protect against these problems, our criminal case process has evolved sophisticated checks and balances. Some protect the process itself, others protect the defendant. Judges and jurors can be removed for bias or prejudice. Witnesses are sworn to tell the truth and can be punished for lying if they don't. Criminal defendants in a serious case can count on representation by an attorney, a trial by jury, the right to confront accusers, a speedy and public trial, and the right to appeal. They are also protected against having to post an excessive amount for bail or having to testify against themselves. These protections are found or implied in the Constitution of the United States and in the constitutions and laws of the various states.

### Facts, Facts, Facts

Basic to every criminal case are facts. When used to prove or establish a point in question before a court, they are called evidence. They are found in the memories of witnesses or in the physical items related to the crime. Woven together, they can tell a story of guilt or innocence.

As you will discover, facts are important at every stage and to every role in the criminal case process. Consider just a few examples. A police officer must have sufficient facts to show probable cause to arrest a suspect or conduct a search. A judge or magistrate examines these facts before issuing a warrant. A criminal trial judge may be called upon to decide whether facts offered in evidence are relevant to the case.

The facts in the case of *People v. Carter* will be important throughout this chapter. They are found, among other places, in the Police Investigation Report, in the defendant's story, and in the witnesses' statements. Sometimes you will be using facts as attorneys do. For example, in one activity you will take the role of prosecutors and, based on the facts, decide whether or not to bring a particular charge. In another, you will cross examine witnesses to establish or refute the facts contained in their testimonies.

Other times you will take a more "neutral" view toward the facts. For example, as jurors you will decide which of the facts are true and whether taken together they amount to the defendant's guilt "beyond a reasonable doubt."

### Using This Chapter

This chapter has four major features:

#### *The Criminal Justice Case Guide*

This is your basic "roadmap" to each important step in processing a criminal case through the justice system. It gives the "big picture" of what happens from the point a crime is committed until a court imposes sentence. Because the actual procedures vary from state to state and in the federal courts, the guide is intended only as a model.

#### *Key Steps*

These special sections are found throughout the unit and provide more detailed information about the various steps outlined in the *Criminal Justice Case Guide*. A typical "key step" will give the purpose for the procedure in question and a description of the things that happen or are decided during it.

#### *Case Notes*

These reading selections take you behind the scenes of the Carter murder case. In them, you will meet all the main characters, learn about the facts and discover the law of the case—all crucial to the ultimate outcome.

#### *Activities*

Each activity revolves around an actual criminal case issue or event and *you* will be on the firing line. Sometimes you'll be asked to take the role of attorney, sometimes a judge or juror. By the time the unit is over, you will have argued constitutional questions, evaluated evidence, examined witnesses, made judicial rulings *and* come to a verdict in the case of *People v. Carter.*

#### *For Discussion*

1. What is the main purpose of the criminal case process?
2. What is the "adversary system"? How does it aid truth-finding in a criminal case? What might be some weaknesses in the system?
3. What are some "checks and balances" found in the criminal case process?
4. Imagine that defendant (D) is being tried for "assault with a deadly weapon." The following chart summarizes the facts as introduced at trial:

### A. Prosecutor's Facts

a. D owns a .38 caliber Smith & Wesson handgun registered in his name.

b. D's pistol was found by the investigating officers at the scene of the shooting.

c. A fingerprint expert testified that D's fingerprints were all over the handgun found at the scene. No other fingerprints were present on the gun.

d. One witness testified that he heard D threaten to shoot the victim two hours before the assault.

e. The neighbor of the victim, who reported the crime, testified that the shots were fired at 7:35 pm on August 1st.

- In your own words, try to summarize the sequence of events as the prosecutor might see them. Try to do the same thing from the defense's point of view.
- To prove a case beyond a reasonable doubt, which facts must the prosecutor cast doubt upon? Why?
- If the facts described in B-b are shown to be untrue, which side do you think would have the stronger case? Why?
- Why would the examination of witnesses under oath be very important to this case?

### B. Defendant's Facts

a. D testified that his pistol was stolen from his house on or about July 29th. No police report was made because D did not discover it missing until August 2nd.

b. D's business partner testifies that D was with her having dinner between 6:45 and 8:30 pm on August 1st.

## The Criminal Justice Case Guide

*Pre-Trial*

INCIDENT

WARRANT OBTAINED

ARREST AND BOOKING 🔑

FIRST COURT APPEARANCE 🔑

PROBABLE CAUSE HEARING 🔑

INDICTMENT INFORMATION

ARRAIGNMENT 🔑

DEFENDANT PLEADS/ IS SENTENCED

MOTIONS 🔑

*Trial*

THE TRIAL: EVENTS & PROCEDURES

SENTENCING

POST TRIAL MOTIONS

(APPEALS TO HIGHER COURTS)

**Key Steps** discussed in chapter are indicated with a key

## Cast of Characters I/ An Activity

The criminal case process is made up of people. Many of them are professionals who devote long hours to investigating, preparing, trying and administering criminal cases on a full-time basis. Others are lay people who, as witnesses or jurors, are drawn into one particular case by chance or civic duty. All are vital to the process.

As you become involved in the case of *People v Carter*, you will learn about many of these people. Since at times you will be asked to take on their roles, it is necessary to find out as much about them as you can. The following descriptions will give you an idea about some of the participants you will meet first.

1. *Police Officers*

Police officers are responsible for investigating crimes and arresting suspects. Many criminal cases begin when, on the basis of investigation or observation, a police officer has enough facts to establish probable cause to arrest. In the course of a criminal case, these judgments of police are tested many times by judges, prosecutors and defense attorneys.

2. *Prosecutor*

The prosecutor (sometimes called the district attorney or state's attorney) represents the public. It is the prosecutor who pleads and presents the government's case against the defendant. At trial, the prosecutor has the burden of proving to the jury (or judge in a bench trial) that the defendant is guilty of the crime charged beyond a reasonable doubt.

3. *Judge*

Judges preside over all pretrial matters (appearances by the defendant or hearings that take place before the trial), and the trial itself. Some criminal cases will involve a number of judges. For example, a lower court judge will often preside at the defendant's first appearance. A judge from the court having jurisdiction in felony matters will preside at the *arraignment* (a pre-trial hearing where formal charges are made) and at the trial itself. If appeals are made, state and/or appellate court judges will rule on the matter.

4. *Defense Attorney*

The defense attorney prepares and presents the case for the person accused of a crime. The defense attorney tries to identify and call witnesses to present the defendant's version of the facts through their testimony. He or she raises reasonable doubts about the defendant's guilt and establishes affirmative defenses that may exist.

With an arrest a person is detained or taken into custody under the authority of law. [CRF Photos]

### For Discussion

1. Briefly review the jobs that judges are called upon to do. What would you say is the most important job? Why?
2. What is the main function of a prosecutor in a criminal trial? What is the main function of a defense attorney?
3. Why is it important to thoroughly test the judgments of an investigating police officer during the course of a criminal case?

### 4 *Criminal Case Characters*

*Directions:*
Place the appropriate letter in the blank that matches the individual's duty in a criminal case. (Letters will be used more than once.)

A. Police Officer
B. Prosecutor
C. Defense Attorney
D. Lower Court Judge
E. Trial Level Judge

1. ____ Raises reasonable doubts about the prosecutor's case.
2. ____ Presides at defendant's first court appearance.
3. ____ Presents the government's case.
4. ____ Presides at the arraignment.
5. ____ Must have probable cause to arrest.
6. ____ Establishes affirmative defenses.
7. ____ Sometimes called a district attorney or state's attorney.

## Key Step/Arrest

***What It Is:***

**The *detaining* or *taking of a person into custody* under authority of law. An arrest may occur before a police officer ever utters the words "You're under arrest" and takes the person to the police station for booking. If, for example, an officer was to stop someone on the street and detain him or her for a long period of time, this could also constitute an "arrest" and thus trigger some of the rights afforded to criminal suspects under the Constitution including the *Miranda* rights as discussed in Chapter II .**

***What is Required:***

**An arrest must be based on *probable cause* and:**

- **Be conducted pursuant to a valid warrant; or**
- **Be conducted without a warrant but in a situation in which one of the judicially-recognized exceptions to the Fourth Amendment warrant requirement applies.**

***Who May Arrest:***

**Depending on the jurisdiction, arrests may be carried out by:**

- **Law enforcement officials; or**
- **Private citizens. (However, many jurisdictions apply certain restrictions on the right of a citizen to make an arrest. Some limit the right to certain offenses, for example, felonies and misdemeanors, but not ordinances; others require that a citizen can only arrest for a misdemeanor if it is committed in his or her presence; others hold that the arrestee must have actually committed the offense. *It is important to find out the law in your own state.*)**

## Police Crime Investigation Report*

**Date of Investigation**
July 6–7, 1982
**Investigating Officer**
Lieutenant Tony Jackson
**Crime Description**

At approximately 7:00 pm on Tuesday, July 6, 1982, Joyce Ann Miller, age 4, was hit in the head and chest by a shotgun blast at a range of about 10 yards. The victim was killed instantly.

**Arrest**

At 11:45 pm on July 7, 1982, I arrested Thomas Wade Carter and booked him for murder in the first degree.

**Report of Investigation**

1. On Monday evening, July 5, 1982, the arrestee, Thomas Wade Carter, age 18, went to a party at the home of his girlfriend, Gail Duran. Witnesses at the party report that almost everyone there, including the suspect, had consumed a lot of beer. A fight broke out at about 3:00 am. Witnesses were not sure about everyone who was involved in the fight, but told me that suspect

Carter was clubbed over the head with a beer bottle by another guest named Oscar Hanks. Friends took Carter to the hospital for treatment. Five stitches were required to close the wound.

2. On Tuesday, July 6, at about 5:00 pm, Carter visited the apartment of a friend, Joel Washington. Washington stated that Carter was still angry about being hit during the fight the night before. Washington also said that Carter remarked, "I'm going to get that guy once and for all. That man is going to pay in a big way." Carter also asked Washington how to work one of his shotguns. Washington is a hunter who owns several guns.

3. At about 6:30 pm on July 6, Carter visited the home of Gail Duran. Ms. Duran told me that Carter was still angry about what had happened the night before. She also said that Carter told her he knew who had hit him. Carter invited Duran to go for a ride with him and she agreed. He asked Duran to drive his car while he sat in the back seat giving her directions. Duran stated that Carter directed her to Fourth Street. When he spotted a red Toyota truck parked in front of one of the houses, he told her to slow down. At this point, Duran told me, she noticed for the first time that Carter was handling a shotgun. She said she became very nervous. Suddenly, according to Duran, there was a loud explosion inside the car. Startled, Duran stepped on the gas pedal and quickly drove away. She stopped on a quiet street nearby. Carter then got into the driver's seat and took her home. Duran stated that Carter told her on the drive back to her home that all of a sudden the shotgun had gone off by itself. He also stated that he did not think he had hit anything.

4. The only eyewitness to the shooting of Joyce Ann Miller was her mother, Ms. Karen Miller. At about 7:00 pm on July 6, 1982, Ms. Miller told her daughter to close the front gate to the yard. Ms. Miller watched as her daughter went to close the gate. At this point, Ms. Miller noticed a black car driving slowly on the street in front of her house. She also saw a long gun barrel pointing out of its rear window right at her daughter. Before she could say or do anything, Ms. Miller stated, there was a loud blast and Joyce Ann collapsed. Ms. Miller and her neighbors rushed to help Joyce Ann. Paramedics were called, but Joyce Ann was pronounced dead on arrival at Central Receiving Hospital. Ms. Miller stated that she had no idea who killed her daughter and could offer no description of the occupants of the black car except that she thought the driver was a young woman.

5. The Miller residence is located three doors to the east of Oscar Hanks' residence on Fourth Street.

6. That evening at 10:05 pm, I received an anonymous phone call at the police station. The caller said, "If you want to know who murdered that little girl, you better check out what happened at Gail Duran's party last night." After interviewing a number of witnesses at the party, including Joel Washington and Gail Duran, I arrested Thomas Wade Carter at 11:45 pm on July 7, 1982. I read the suspect his *Miranda* rights and booked him for the first degree murder of Joyce Ann Miller.

### *For Discussion*

1. In order to arrest Carter, Lt. Jackson must have had *probable cause*. Probable cause means that the officer has enough facts and circumstances to cause a reasonable person to believe that a crime was committed and that the suspect committed it. Murder is often defined as the unlawful killing of a human being with *malice aforethought*. "Malice aforethought" refers to the state of mind of the person doing the killing. Malice aforethought can mean that the killer:

- intended to kill; or
- intended to inflict great bodily harm (and in fact caused someone's death); or
- intended to do any act where there was an obvious risk that death or great bodily injury might result from his or her actions.

What facts or information did Lt. Jackson have that might give him probable cause to arrest Carter on a charge of murder? *Explain your answer.*

2. According to the information gathered by Lt. Jackson, do we know for sure what happened inside the Pontiac at the moment the shotgun was fired? What else *could* have happened? What are some other ways the shooting could have taken place?

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*Some material in this chapter was adapted with permission from *Fair Trial/Free Press*, Todd Clark and Rebecca J. Novelli, Benziger Bruce & Glencoe, Inc., 1977.

## Case Notes/State Criminal Code Sections

In the state where Joyce Ann Miller was killed, the following criminal laws are in force defining forms of criminal homicide (literally, "man killing").

***Section 274: Degrees of Murder***

1. All killings committed with malice aforethought and which are premeditated are *Murder in the First Degree.*
2. All other killings with malice aforethought are *Murder in the Second Degree.*

***Section 298: Manslaughter***

Any killing committed without malice aforethought.

1. *Voluntary Manslaughter:* All *intentional* killings committed as a result of serious *provocation* or *extreme anger.*
2. *Involuntary Manslaughter:* All *unintentional* killings which are the direct result of committing:
   a. any *dangerous* and *unlawful* act; or
   b. any *lawful act* in an extremely *careless* or negligent manner.

***For Discussion***

1. Under the laws of Joyce Ann Miller's state, what is the major difference between the crimes of murder and manslaughter?

2. What is malice aforethought? What is premeditation? (If necessary, review materials in Chapter I.)

3. Reread Section 274 of the State Code. What is the major difference between first and second degree murder?

4. Reread Section 298 of the State Code. What is the major difference between voluntary and involuntary manslaughter?

5. Read the following sentences which describe events that also occured in Joyce Ann Miller's state. For each one, decide which is the most serious form of criminal homicide that could be charged, based on the elements from the state criminal code.

a. ____ Mr. Jones poisoned his wife's coffee over a period of several weeks, resulting in her death.

b. ____ David, not intending to hurt anyone, fired his rifle into a passing bus, killing the driver.

c. ____ Mary, furious because Joan hit her with an umbrella, stabbed and killed Joan.

d. ____ Jim threw apples onto the highway from an overpass, causing a car to swerve off the road. The driver of the car died of his injuries. (There is a state law which makes throwing anything off an overpass a misdemeanor.)

e. ____ Donna, a scuba diver, pulled her friend's mouthpiece regulator out when they were 50 feet underwater as a joke. Her friend drowned. (See answer section.)

6. *Using Resource People*

Invite an attorney into the classroom to find out how your state classifies homicides and what elements the state must prove in each.

## Case Notes/In the Defense of Tom Carter

After Thomas Carter was arrested, he exercised his Miranda rights and remained silent. He called his parents, who hired a private attorney, Susan Jaffee, to represent him. Many arrestees cannot afford an attorney and must wait for the court to appoint a free private attorney or public defender to represent them. In general, a defendant must show that he or she cannot afford to pay an attorney to qualify for such an appointment.

The first thing Tom's attorney did was to go to the police station to interview her client. Ms. Jaffee asked Tom to explain what happened. Tom then told his side of the story and she took notes . . .

***Tom's Story***

"Last Monday night I went to a party at my girlfriend Gail's house. We drank some beer and had a good time. Then sometime around 3:00 am a bunch of guys started to fight. I don't even know why it started. All I know is that I got hit on the head with a beer bottle. It split my scalp, and I was all bloody. I had to go to the hospital and it took five stitches to stop the bleeding.

"While we were driving to the hospital I was mad, and I wanted to know who hit me. When one of the guys mentioned that Oscar Hanks could have done it, I knew he was right. Oscar and I got into a fight about a month ago, and he knifed me in the leg.

"The day after Gail's party, I decided to get back at Oscar. I know it was dumb, but I decided to take my Dad's shotgun and blast a bunch of holes in Oscar's truck. He's real proud of it, you know. Well, this is when I got into trouble. I got the shotgun, and even asked Joel Washington how to work it. He's a hunter and has a couple of his own. Then I went over to Gail's to get her to drive me around Oscar's neighborhood. I spotted his truck and was going to blast it. Before I had a chance, the car swerved or something, and the gun went off. I didn't even think I hit anything. I didn't see anybody. Still, it was real scary! I told Gail to get us out of there fast.

"Look. I know I'm in big trouble. But believe me, I didn't mean to shoot that little girl. I didn't even know she was there! I swear, it was an accident."

### How It Looks to Tom's Attorney

Susan Jaffee finished jotting down her notes and then gave Tom an overview of her thoughts on the case . . .

"Tom, I hope you are telling me the truth. But, even if you are, it's still going to be a tough case to defend. For one thing, the shooting death of a 4-year-old girl is going to stir up a lot of emotion in this community. The newspapers have been running stories for weeks on youth violence and your case will get a lot of coverage. At this point, the police are talking about first degree murder, and with all this publicity the prosecutor could stick to those charges. We'll just have to wait and see until they make their review of the evidence and decide on what charges to file. They might decide to charge you with something less serious. Meanwhile, I'll start checking out the witnesses. There's a lot that can happen between now and the trial.

"First, we have to get through your first court appearance. In a few minutes, I'll be asking you some questions. This information might help me try to get you out of here on bail. It will be difficult, but if your parents can raise the money, I'll try.

"Next, we have to face a probable cause hearing where the judge will decide whether you have to stand trial on whatever the prosecution decides are the final charges. In the meantime, we have the right to "discovery." This means we will find out exactly what evidence the prosecution is relying on. The probable cause hearing will give us a chance to test some of their witnesses.

"If there is a finding of probable cause, you will have to make an appearance at an arraignment. There, depending on what happens, you'll have to plead to the charges and a trial will be scheduled. At that stage, I might be able to do something about the publicity problem. At the very least, we'll do our best to make sure the jurors are not unduly influenced by the media reports.

"While we are waiting to hear from the prosecutors, I want you to think about some things. I want you to think over everything you have told me today. If you have forgotten anything, I want to know. If you did not give me the whole story, I want to know. Right now, I'm the best friend you've got. No surprises, O.K.?"

Back in her office, Ms. Jaffee reviewed the information Tom Carter had given her about his background. She knew that another court agency would be compiling a similar report for the judge to consider in deciding on the issue of pre-trial release. A summary of her notes follows.

**File: *Tom Carter*/**Background

*Prior Arrests/Convictions*

No prior convictions. However, Carter was once arrested for disturbing the peace. The charges were subsequently dropped. At the age of 17, Carter was cited for reckless driving and his driver's license was suspended for six months.

*Employment*

Employed full-time as an assistant manager of the parts department of a local auto dealership. He had held his present position for nearly six months after having worked there part-time during high school and full-time after graduation. His current income is $11,000 a year.

*School Record*

Carter was an average student throughout high school, though because of poor attendance he completed credits at a continuation high school for his diploma. He was suspended twice, once for fighting, once for truancy. Recently, he completed a special three-week course offered by Ford Motor Company in parts management before qualifying for his present job.

*Residence*

Carter lives with his mother, sister and younger cousin in the family home. He makes monthly contributions for rent, utilities, food and maintenance.

## Key Step/First Appearance Before a Judicial Officer

***Purpose:***

**To ensure that criminal suspects are made aware of their rights and do not suffer undue hardship at the hands of law enforcement, most jurisdictions require that an arrested person (arrestee) be brought before a judicial officer "without unnecessary delay" after arrest. A judicial officer may be a *judge, magistrate* or *commissioner* depending on the state. Some states require that this first appearance take place within a specified period—for example, within 24 or 48 hours after arrest.**

***Typical Procedures***

- **The arrestee is formally *informed of the charges* by the judge or magistrate.**
- **The arrestee is *informed of his or her right to counsel*. If he or she cannot afford to hire an attorney, the judge or magistrate will appoint one. (These court-appointed lawyers for criminal defendants are often government employees known as "public defenders.") In some cases, private attorneys may be appointed to represent criminal defendants for a reduced fee or no fee.**
- ***Bail is determined.* Generally, bail schedules are set in advance under a state's laws or court rules, for misdemeanor offenses. Thus, if a person is accused of committing a misdemeanor X, Y or Z, establishing the amount of bail is simply a matter of referring to the predetermined bail lists.**

**In felony cases, it is up to the judge or magistrate to:**

1. **Fix the amount of bail (often with reference to state imposed standards);**
2. **Release the arrestee on his or her own recognizance (without cash bail); or**
3. **In limited instances, deny bail altogether.**

A defense attorney consults with his client. [UPI]

## ▶ The Question of Bail/ An Activity

As outlined in the *Key Steps*, there are two ways for criminal defendants to be released from jail pending trial. First, a judge might set bail. This means that the judge will require the defendant to deposit a certain amount of money with the court in order to provide some assurance that he or she will come back for trial. Some defendants have enough money to pay for bail themselves; others rely on private bail bond companies which post the necessary amount for a fee (usually 10% of the amount). Generally, if the defendant posts bail and shows up for trial, he or she gets all the bail money back. Failure to appear in court will result in the court keeping all of the defendant's bail money.

Another method of pre-trial release is the release on one's "own recognizance." This means that the judge releases a criminal suspect solely on his or her promise to return for trial. No bail money is required. This method of pre-trial release is usually available only to persons who have been accused of non-violent and relatively minor crimes. The judge must also be convinced (as in cash bail cases) that the defendant is not likely to try to leave town or attempt to intimidate witnesses before his or her trial.

In rare cases, a judge has the option of refusing to release the defendant prior to his or her trial. Many states have provisions in their criminal codes which define certain crimes as "non-bailable" offenses. Typically, these are crimes punishable by death or by life imprisonment without possibility of parole. In these cases there is a higher risk of the defendant fleeing to avoid prosecution and a much greater danger to society.

### Judicial Criteria for Setting Bail

Under the criminal laws of the state where Joyce Ann Miller was killed, the offense in this particular case is bailable. On the other hand, there is almost no chance of the defendant being released on his or her own recognizance in this or any other state. Thus, the criminal court judge must determine an appropriate amount of bail for Thomas Wade Carter.

The criteria that a judge must take into consideration in setting bail include among other things:

- the nature of the crime;
- the past record of the accused; and
- the likelihood that the defendant will

remain in the state and appear in court when he or she is supposed to.

**Procedures**

*Preparation*

Invite a criminal lawyer into the class to take the role of a judge who must determine the bail for Tom Carter. (If none are available, the teacher can take this role.)

1. Review:
   a. the Police Investigation Report on page 79;
   b. Tom Carter's statement on page 81; and
   c. Susan Jaffee's file on page 82.
2. Divide the class into two groups with students in one group taking the role of prosecuting attorneys and in the other, defense attorneys.
3. Attorney Instructions:
   - *Prosecutors:* You believe that to make sure Tom Carter appears for trial, a high bail is necessary. Work with a partner from within your own group to develop arguments to support your position. (Assume $100,000 is the minimum set by law.) List five or ten of the facts you think are the most important to support your position, keeping in mind the criteria (mentioned above) that the judge will apply in making his or her decision. Once you have developed your arguments and have listed the facts to back them up, share your ideas with the other members of the prosecution group. What are the three best arguments in favor of a higher bail for the accused in this case? What facts do you have to support your arguments?
   - *Defense attorneys:* Follow the instructions in the paragraph above, except that you will be trying to convince the judge to set as low a bail as possible for your client, Tom Carter, because you believe he will appear for trial and want to minimize his financial burden. Work with a partner from within your group to develop arguments in favor of your position. List five or ten of the facts you think are the most important to support your position, keeping in mind the criteria (mentioned above) that the judge will apply in making his or her decision. Once you have developed your arguments and have listed the facts to back them up, share your ideas with the other members of the defense group. What are the three best arguments in favor of a low bail for the accused in this case? What facts do you have to support your arguments?
4. *Presentations:*

   After both sides have prepared their arguments, hold an informal classroom debate on the question of bail between the prosecutors and defense attorneys with the lawyer (or teacher) acting as judge.
5. *Decision:*

   After both sides have presented their arguments, the judge should set bail for Thomas Carter and discuss the facts and arguments that he or she relied on. If a lawyer is involved, he or she should be asked to discuss the likely outcome of the bail hearing if this had been a real case.
6. *Debriefing:*

   Have a class discussion using the following questions:
   a. Are there any non-bailable offenses under your state's criminal laws? If so, what are they? Do you agree that bail should be denied and an accused person held in custody in those instances? Explain your answer.
   b. The American criminal trial system is based on the notion that a person is presumed to be innocent until proven guilty. Do you think that the whole system of bail runs contrary to this concept? Why or why not?

## ■ Case Notes/ Prosecutorial Review

After the police make an arrest for a felony, the prosecutor's office must review the case and make a number of decisions about what crime or crimes should be charged, if any, and what strategies might be used in handling the case. During this decision-making process, the prosecutor uses what is sometimes referred to as "prosecutorial discretion." In other words, the prosecutor has a number of options in these matters. Depending on the jurisdiction, the review can be made by an individual prosecutor or a special review unit of attorneys which works closely with the police in evaluating cases after arrest. After the review, the case may be assigned to another prosecutor who then becomes responsible for processing it through the system.

During the initial review, prosecutors must first decide if enough evidence exists to file formal court charges against the arrestee. To do

Prosecutor's review a case to determine what formal charges should be filed. [CRF Photos]

this, the prosecutor must review each element of all the possible chargeable crimes and decide for each if enough evidence exists to prove it. For example, under the common law and in many states, the crime of larceny has the following elements: 1) the taking; 2) and carrying away; 3) of personal property; 4) that belongs to another person; with the specific intent to *permanently deprive the owner* of his or her property. In addition, many states distinguish between the crime of grand larceny (a felony) and petty larceny (a misdemeanor) depending on the value of the property taken. (In Illinois, for example, taking property valued at $300 or more is a felony; taking property of a lesser value is a misdemeanor.)

**Analyzing a Case**

Imagine that a prosecutor has to decide whether or not to file formal court charges for grand larceny in a state with theft laws as described above. He or she has the following evidence drawn from the police investigation and report:

John Witness saw Mary Defendant reach into a car, remove a watch from the dashboard, and walk away with it. John summoned the police, who apprehended Mary several blocks away while she was trying to sell the watch to a passerby. Other evidence includes a statement by the owner identifying the watch as her property.

Should Mary be charged with grand larceny? To find out, it is necessary to match the evidence with each element of the crime.

In this case, John Witness's testimony establishes a taking and carrying away of the watch. The location of the property (on the dashboard) and the owner's statement establish another person's ownership. The law defines a watch as personal property. The police officer's testimony and that of the passerby establishes the necessary intent element. (By trying to sell the watch to another, Mary has demonstrated an intent to permanently deprive the owner of his or her property.)

So far it looks as if the prosecutor has enough evidence to prove a case of larceny beyond a reasonable doubt. But should he or she file a felony or misdemeanor complaint? The answer to this question depends on the value of the watch. The prosecutor can have the matter investigated to gather more evidence. If it turns out the watch was worth more than $300, as proved by a bill of sale or an expert appraisal, a felony charge can be made. If the evidence does not support such a high value, a charge for the lesser crime of petty larceny can be filed.

As you can see, the process of evaluating a case can be quite complex. Many related issues may come into play. Was all the important evidence legally obtained? Are the witnesses reliable and believable? What evidence might the defense produce which counters the prosecutor's case?

### Factors in Exercising Discretion

In general, the prosecutors should prosecute if, after a thorough investigation, they find: 1) a crime has been committed, 2) he or she can identify the person who committed it, and 3) the prosecutor has evidence which supports a guilty verdict.

However, as has been mentioned, the prosecutor does have discretion in deciding what charges, if any, to bring. In making these decisions a prosecutor might consider many factors. For example: is there a reasonable doubt that the defendant is guilty? Was the harm caused by the offense inconsequential? Is the probable punishment out of proportion to the offense or the offender? Is the crime itself rarely enforced to the extent that the community no longer considers it a crime?* Other factors might include the extreme youth or old age of the offender; the past record of the offender; the priorities of the prosecutor's office (i.e., violent crimes tend to have priority; so-called victimless crimes may not); and the age of the case.

### What Should the Charge Be?

In the following scene, three prosecuting attorneys—Malloy, Stein and Krutzer—have been assigned to review the Carter case. They are exploring the criminal charges that might apply:

*Malloy:* Let's start with the most serious offense that Carter could be charged with. First degree murders in this state are all murders with *malice aforethought* and *premeditation*. The decision to kill someone had to have been weighed and reflected upon after the intent to kill was formed. Now, in Carter's case we have evidence that he had more than 12 hours to consider killing Oscar Hanks . . .

*Stein:* Just one problem . . . he didn't kill Oscar Hanks . . .

*Krutzer:* I don't see any big problem there. If we can show that Carter did form the intent to kill Hanks, we might be able to prove that his intent switched to the little girl before he pulled the trigger. After all, the *transferred intent doctrine* holds that the elements of first degree murder can be satisfied even if the killer gets someone other than his intended victim. Also, Carter may have thought that the little girl was Hanks' sister or maybe a relative. Or maybe he formed a whole new intent to kill the little girl and premeditated before pulling the trigger.

*Stein:* Maybe . . . but how about second degree murder? Remember, malice aforethought can be established by an intent to do any act where there is an obvious risk that death or great bodily harm may result. Here we have a guy who stated a desire to "get Hanks." He loads up a shotgun, got into a car, and started blasting away. I don't care if he was trying to hit the little girl, the house or the truck. There were people on the street, he didn't care about their safety and he should have known that he was endangering them. Also, just firing at the truck is a felony. Any killings which take place while attempting to commit a felony are murder under the *felony murder rule*.

*Stein:* Let's not be too hasty. What if Carter didn't "start blasting away," as you put it? What if the gun just went off accidentally?

*Malloy:* Oh . . . you would consider a charge of involuntary manslaughter?

*Stein:* Yes, but such a careless handling of a loaded shotgun in a residential area amounts to criminal negligence in my book.

*Krutzer:* At the very least.

*Malloy:* I suppose voluntary manslaughter is also a possibility.

*Stein:* Be serious, Malloy. After 12 hours? Even if he was seriously provoked by Hanks, he had plenty of time to cool off.

*Malloy:* Maybe so. Anyway, we've got plenty to think about and we've got to decide. The newspapers are showing a lot of interest in this case. The chief prosecutor told me that he has a personal interest in this case—top priority and all that. We've got to charge Carter with something . . . but what?

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*From: "American Bar Association Standards Relating to the Prosecutor Function"

### *For Discussion*

1. In your own words, what is prosecutorial discretion? What are its advantages and disadvantages?

2. Review the facts for exercising prosecutorial discretion on page 86. Which do you think are valid? Which, if any, don't you think should be used? Why?

3. Review "What Should the Charge Be," page 86. Then answer the following questions:
   - What is the doctrine of transferred intent? How does it apply to the Carter case? (Try drawing a diagram on the board using the characters from the case.)
   - Why did Prosecutor Stein argue against a charge of voluntary manslaughter? Explain your answer.
   - What additional evidence, if any, do the prosecutors need to make a decision?

4. Invite a prosecutor to your class. Ask him or her to discuss how prosecutorial review and discretion work where you live and some of the factors that might be used in making decisions about which crimes to charge.

A defense attorney at the arraignment of his two clients. [UPI]

## The Prosecutor Decides/ An Activity

In the following activity, assume that you are a prosecutor working with Malloy, Stein and Krutzer on the Thomas Carter case. Form small groups and exercise your prosecutorial discretion as directed below.

1. Review the following materials:
   a. *Police Crime Investigation Report,* pages 79–80;
   b. *State Criminal Code,* page 81;
   c. "What Should the Charge Be? page 86.

(You may also wish to consult "Murder Most Foul and Other Crimes" for additional background information.)

2. As a group, complete the following worksheet. Use a separate sheet of paper. Be prepared to discuss your answers with the class.

## Worksheet

**First Degree Murder**

- a. Is there evidence that Thomas Carter formed an intent to kill Oscar Hanks? Explain.

  b. Is there evidence of premeditation? Explain.

  c. Is there evidence which would show that this intent was "transferred" to the killing of Joyce Anne Miller? Explain.

  or

  d. Is there evidence to show that Thomas Carter formed an intent to kill and premeditated the killing of Joyce Anne Miller? Explain.

**Second Degree Murder**

- Is there evidence that Thomas Carter formed an intent to kill Joyce Anne Miller and that his intent was not premeditated? Explain.

  or

- Is there evidence that Thomas Carter had the intent to do an act where there was an obvious risk that death or great bodily harm would result? Explain.

**Voluntary Manslaughter**

- Is there evidence that Thomas Carter formed an intent to kill Oscar Hanks? Explain.
- Is there evidence that Oscar Hanks seriously provoked the actions of Thomas Carter? Explain.
- Is there evidence that Thomas Carter had sufficient time to "cool off" after being provoked? Explain.

**Involuntary Manslaughter**

- Is there evidence that Thomas Carter committed an act in a criminally negligent manner? Explain.

3. Considering all relevant factors, what crime would you charge Thomas Carter with? (Be prepared to present and discuss your final recommendation with the class.)

## Key Step/Probable Cause Hearing

***Purpose:*** **Before a felony case can go to trial, there must be a finding that there is *probable cause* to believe that a crime was committed and the arrestee committed it. The purpose of the probable cause hearing is to keep insubstantial charges of serious offenses from being brought to trial. It is also designed to protect both the accused and the state from spending time and money unnecessarily.**

***Types of Hearings***

- **Some states use preliminary hearings or examinations to determine if the arrestee should be brought to trial; other states use them to determine if the accused should be bound over for a grand jury hearing. At the preliminary hearing, the prosecution presents evidence to a judge or a magistrate to prove that there is probable cause, and the defense may cross-examine the prosecutor's witnesses. (This procedure can be quite useful for the defense because it gives them a better idea of the prosecution's case.)**

**If the judge finds that there is probable cause, the prosecution is authorized to file a document called "an information" with the court and preparations for the trial begin.**

- **In some states (and in all federal felony cases) probable cause is determined by a *grand jury*. The grand jury is comprised of citizens (usually 23) from the county where the crime occurred. Only a certain number of the 23 grand jurors (often 12 or 14) must find probable cause in a given case for a document called a "bill of indictment" (like an "information," a written accusation of a crime) to be issued and preparation for the trial to begin.**
- **In most states, the prosecutor has the option of seeking a finding of probable cause through either a grand jury or a preliminary hearing. Since (unlike preliminary hearings) the accused has no right to counsel or to cross-examine the state's witnesses in grand jury hearings, a prosecutor might be more likely to go for a grand jury indictment in cases where cross-examination would be especially traumatic to a witness so soon after the crime (e.g., cases of sex crimes or where the witness is very young or frail). The vast majority of felony cases, however, commence by information.**
- **In misdemeanor cases, there is no separate hearing to establish probable cause after the accused has been arrested. A written *complaint* against the arrestee serves as the formal accusation to get the prosecution of misdemeanor cases underway. (Yet, the defendant can ask for a copy of the complaint with copies of the police reports attached.)**

## Key Step/Arraignment

### Purpose

**After an information, indictment or complaint has been filed, the defendant is called into court to *answer the charges*. This court appearance is known as the "arraignment." (In most misdemeanor cases, this step takes place at the defendant's first and only pre-trial hearing.)**

### Typical Proceedings

- **The defendant is again informed of his or her constitutional rights.**
- **The judge reads the information or indictment to the defendant and usually gives him or her a copy of it.**
- **The defendant must answer (or "plead") to the charges.**
- **The judge will ask the defendant if he or she wants a jury trial or a court trial (decided by the judge without a jury).**
- **The defendant may make pre-trial motions (e.g., to suppress illegally-obtained evidence or to have the case tried in a different court).**

## Case Notes/An Issue at the Arraignment

Joyce Anne Miller's death shocked the residents of the community. Many citizens and community leaders condemned what they called "this latest example of teenage violence." Newspapers began devoting substantial coverage to the case. Neighbors of the Miller family told TV reporters that they wanted the death penalty for Carter. A police officer was quoted in a local newspaper as saying that he thought Joyce Anne's death must have been a "joy killing." A representative of the district attorney's office announced at a press conference that he believed "drugs were involved." One newspaper headline read, "Child Killer Says It Was 'An Accident!'" Thomas Carter's attorney, Susan Jaffee, also heard from several anonymous phone callers who threatened to harm her if she did not drop out of the case.

### A Problem for the Defense

All of this deeply concerned Ms. Jaffee. She was afraid that the publicity would hurt her client's chances of getting a fair trial. Jury selection might be a problem, because finding jurors who had not heard of the case and already formed an opinion would be extremely difficult. Even if this were accomplished, there was the danger of jurors being influenced by publicity and public opinion during the trial itself.

Once it had been decided that Carter would have to stand trial, his attorney decided to act. At the arraignment, she would make a motion for a gag order.

### Motion for a Gag Order

Judges have the responsibility of making sure that criminal defendants receive a fair trial. They are given a great deal of discretion in deciding how trials are conducted. Trials must be orderly and as free as possible from bias or prejudices. A key element is making sure that the fact-finder, be it judge or jury, is impartial. When judges act as the fact-finders, it is assumed they will be able to ignore outside influences and decide the facts on the basis of what is legally admitted into evidence during the trial. Jurors, who have little or no experience with the law, might be more easily swayed by outside influences, including opinions of friends or public officials and newspaper or T.V. accounts of the crime. For example, what might happen if a juror were to read about a piece of evidence which had been legally excluded from consideration at trial, but which pointed to the defendant's guilt? Knowing of this fact might influence that juror's opinion and if he or she shared it with other jurors, it could sway the whole jury. Gag orders are designed to prevent such interference. They prohibit trial participants and government officials from making statements to the press and restrict what the press may publish about the case. Those who disobey gag orders can be held in contempt of court and punished.

At the close of her argument in support of her motion, Ms. Jaffee made the following statement:

> "Public reaction to the death of Joyce Anne Miller has reached the near-hysteria level. Public officials including the police and representatives of the District Attorney's office have made prejudicial and unfounded statements regarding the case. The news media is behaving in an irresponsible manner by suggesting that Thomas Carter is already guilty. If these trends continue, it will be impossible to conduct a fair trial, if indeed, it is even possible now. Under these circumstances, a gag order is essential, your Honor."

In response to this argument, the prosecutor opposed the issuance of a gag order and reminded the judge that a certain amount of public attention to such a case was natural. Under the First Amendment of the U.S. Constitution, the news media has a right to keep the public informed. If denied this right, various reporters might print or broadcast misinformation. Furthermore, he argued that a gag order should only be used in exceptional circumstances and that normal procedures such as cautioning the jury not to discuss or read about the case would probably be sufficient.

The judge thanked the attorneys and said that she would consider the matter and announce her decision the next day.

### *Ruling on the Motion/An Activity*

Imagine that you are the judge who must rule on the defense's motion for a gag order in the case of Thomas Carter. To prepare your ruling, complete the following steps:

1. Review "An Issue at the Arraignment," pages 89–90.
2. In coming to a decision, consider these questions:
   - What is the purpose of a gag order?
   - What are some arguments in favor of issuing a gag order in this case?
   - Are there alternatives to a gag order? If so, would they be sufficient to preserve a fair trial?
   - What are some arguments against issuing a gag order? What rights and interests would be affected?
   - Should a gag order be issued in the Carter case? Why or why not?
3. Write a brief order stating and supporting your decision. Be prepared to present it to the rest of the class and discuss.

## Key Step/Trial Procedures

Trials are controlled by strict procedures and rules so that each side in a case will have a fair and equal chance to present its case. One of the main responsibilities of a judge is to be sure that the trial procedures are followed closely. The major procedures observed in a criminal court trial are outlined below.

1. *Jury Selection*

In all criminal jury trials, the first step is to select and empanel a jury to hear the case. This is done through questions posed to prospective jurors by the prosecution and defense. The judge may also take an active role in the process.

2. *Opening Statement*

After the judge calls the court to order, he or she will ask for the trial to begin with opening statements. The prosecution and defense each make an opening statement to the jury. The opening statement is an outline of the evidence each side intends to present during the trial. The prosecution delivers its opening statement first. The defense attorney usually follows immediately with a statement, but may wait until the beginning of his or her case-in-chief.

3. *Presenting Evidence*

The prosecution presents its side of the case first. (This is called the prosecution's case-in-chief.) It usually consists of introducing certain material objects called exhibits (e.g., a gun), as well as questioning prosecution witnesses. After the prosecution has finished presenting its side, the defense may introduce its exhibits and witnesses. Both exhibits and witnesses' testimony are considered to be trial evidence. Strict rules of evidence must be followed, however, before either is allowed into the trial.

Attorneys conduct *direct examination* when they question their own witnesses. *Cross examination* follows when an opposing attorney is given a chance to ask the witness questions. Lawyers conduct cross examination to test and find weaknesses in the testimony of their opponents' witnesses. They may also try to put doubts into the minds of the jurors about the believability of their opponents' witnesses.

4. *Closing Arguments*

After all witnesses have been examined, and all other evidence has been presented, each side makes a closing statement or argument to the jury. The closing argument is an attempt to summarize what has been established or not established during the trial. Closing arguments are also designed to try to persuade the jury. The prosecution delivers the first closing argument to the jury. The closing argument of the defense ends the evidence phase of the trial.

5. *Instructions to the Jurors*

Following the closing arguments, the judge gives instructions to the jury. These instructions state the law that applies to the case. The judge also reminds the jurors to base their verdict solely on the evidence admitted during the trial. Since the burden of proof is on the prosecution, the judge will instruct the jurors to find a verdict of guilty only if the state has proved its case beyond a reasonable doubt.

6. *Jury Deliberations*

After hearing the judge's instructions, the jury leaves the courtroom and re-assembles in a jury room to deliberate, discuss and decide on a verdict. The jury members first select a foreman who will conduct the deliberations. The jury then reviews the evidence and votes on a verdict. Although the U.S. Supreme Court has ruled that unanimous verdicts of guilty or not guilty are not mandatory in all criminal cases, most states still require them.

Several votes may be necessary before the jurors arrive at a unanimous verdict. If, after a reasonable time, the jurors are unable to reach a unanimous verdict, they become a "hung jury." The foreman will report this fact to the judge. If the judge is convinced that further jury deliberations are futile, he or she will declare a mistrial. The prosecutor will then have to either request another trial with a new jury, or drop the charges against the defendant. If the jury returns a unanimous verdict of not guilty, the defendant goes free. When the jury unanimously decides that the defendant is guilty, a date for a sentencing hearing will be set.

## Case Notes/Cast of Characters II

A criminal court room in session is filled with people. Some are spectators; some are friends and family of the victim or accused. Others take an active part in the trial itself. The following descriptions will give you an idea about the major participants. (Some you have already met, but review them again carefully.) As the trial of Thomas Carter progresses, you will be asked at times to take on their roles.

- The *judge* presides over the trial. He or she rules (decides) on all motions made by the attorneys on admissibility of testimony or items in evidence and on the procedures to be followed during the trial. At the end of the trial, the judge instructs the jury about the applicable rules of law. In a criminal trial, if the jury reaches a verdict of guilty, the judge then determines the sentence to be given the convicted person. (In many states, the jury determines the punishment in death penalty cases.) If the jury reaches a verdict of not guilty, the defendant is discharged.

- The *bailiffs* are usually deputy sheriffs or marshals, or some other law enforcement officer who is responsible for: keeping order in the courtroom; escorting the accused in and out of the courtroom; protecting the jury from outside influence; and assisting the court clerk in ceremonial duties such as asking all to rise when the judge enters the court.
- The *court clerk* is the main administrative assistant to the judge. He or she keeps minutes of courtroom proceedings; keeps catalogs and custody of exhibits and other items of evidence; prepares all written orders of the court (summons and warrants, for example) as directed by the judge; administers oaths; and calls the jurors for selection.
- The *court reporter* makes a transcript by machine or shorthand of everything that is said in the trial. The court reporter prepares a typewritten transcript of these records for use by the judge and the parties involved in the case.
- The *prosecution lawyers* are members of the district attorney's office, city attorney's office, or state and federal attorney general's office. They represent the complaintant, either the people of the State or the United States government. They must prove that the accused is guilty of a particular crime beyond a reasonable doubt.
- The *defense lawyers* are private attorneys or members of publicly supported organizations, such as the public defender's office. They must defend the accused by raising reasonable doubts about the prosecution's case and by showing that the state or government does not have enough evidence to convict the defendant. All lawyers are officers of the court. They must, therefore, observe all rules of law and ethics that apply to the presentation of testimony and evidence at trial so that a complete and fair trial will take place.
- The *defendant* is a person accused of a crime. He or she assists the defense lawyers in the proper presentation of his or her case and accepts or appeals the results of the trial.
- *Witnesses* are persons who know something about the facts to be decided and who are asked to tell the members of the jury what they actually saw and heard about the case under oath.
- The *jury* is a panel of citizens (usually 12) from the community who meet certain minimum requirements in age and mental capacity. They must decide questions of fact on the basis of the evidence presented in the courtroom and reach a verdict based on those facts.

***For Discussion***

1. Which role is charged with deciding issues of law?
2. Which role is charged with deciding issues about facts?
3. *Ask a Court Clerk*

Court procedures vary from jurisdiction to jurisdiction. Contact a court clerk and find out about the procedures used where you live. Sample questions might include:

- How are jurors identified and selected? What requirements must they meet?
- What procedures are used for bringing witnesses into court?
- What procedures are used for admitting physical evidence or exhibits at a criminal trial?
- How are jurors protected from outside influences?
- What are the ceremonial duties of a clerk and bailiff?
- What are the most important duties of a court clerk?

## ▶ In the Halls of Justice/ An Activity

There is perhaps no better way to get the feel of criminal court process than to observe a criminal trial in action. To do this, you must visit a courthouse.

As a class or in small groups arrange to visit a criminal courthouse. Make arrangements in advance. Many courthouses have tour programs or are willing to accomodate groups if arrangements have been made in advance. Contact the court's clerk of services or the clerk of the criminal docket for information. He or she can suggest an appropriate time for the visit and help you plan an itinerary. Try to include a visit to: 1) a preliminary hearing, 2) an arraignment, 3) a jury selection underway, and 4) a criminal trial in progress.

When you arrive at the courthouse

observe appropriate decorum. Be especially quiet when entering or leaving courtrooms. Use the following form to help arrange your visit and for reporting your experience to the class.

## Field Experience Report

Name of Courthouse

Address

Telephone Reporting Time

Contact Person (if any)

1. Describe the general environment of the courthouse. Are the court facilities crowded and noisy, or calm and businesslike?

2. Are many people in the halls for their cases to be called?

3. Describe the security arrangements in the court building generally, as well as in the courtrooms.

4. In the Arraignment Court, *describe what is going on.*

5. In a Preliminary Hearing, *describe what is going on.*

In addition, as part of your Field Experience Report, answer the following questions:

6. At a criminal jury trial in progress:
   - What is the nature of the case?
   - *What do you observe* the prosecutor (Deputy District Attorney or Deputy City Attorney) doing during the trial?
   - *What do you observe* the defense attorney (Deputy Public Defender or private attorney) doing during the trial?
   - *What do you observe* the judge doing during the trial?
   - *Describe* the questioning of one witness in the trial.
   - Do the jurors seem to be attentive? Describe them.
   - What is your overall impression of your courthouse visit? Were you confused by anything you saw or heard?

7. If the opportunity arises or can be arranged, interview an officer of the court (e.g., court clerk, judge, prosecuting attorney) while on a site. Select questions from the following list or make up your own.
   - Does the court have a large backload of cases? If so, why?
   - What percentage of the cases before the court are disposed of as a result of plea bargaining?
   - What is plea bargaining? What is your opinion of it?
   - How long does it take a criminal case to come to trial in this court? A civil case?
   - What percentage of the defendants appearing in the court for trial are represented by a Deputy Public Defender?
   - In what percentage of trials is the defendant found guilty?
   - What percentage of those convicted by the court are locked up in a correctional institution? Fined? Put on probation?
   - What percentage of accused persons remain in jail awaiting their trials?

## ■ The Courtroom Setting

As with all dramas, there is a setting for a criminal trial. It is the courtroom. In it the judge presides, the jury is selected and empanelled, witnesses are sworn and examined, and a verdict is rendered. On this stage, the fates of individuals are debated and decided and the aims of justice are pursued. Some courtrooms are ornately carved in dark woods and rich furnishings. Others are designed with an eye towards efficiency and practicality. Some are old and threadbare, others are new and starkly modern. All serve the same purpose.

Below is a diagram of a typical courtroom. When conducting the activities in the trial of Thomas Carter, arrange your classroom in a similar way.

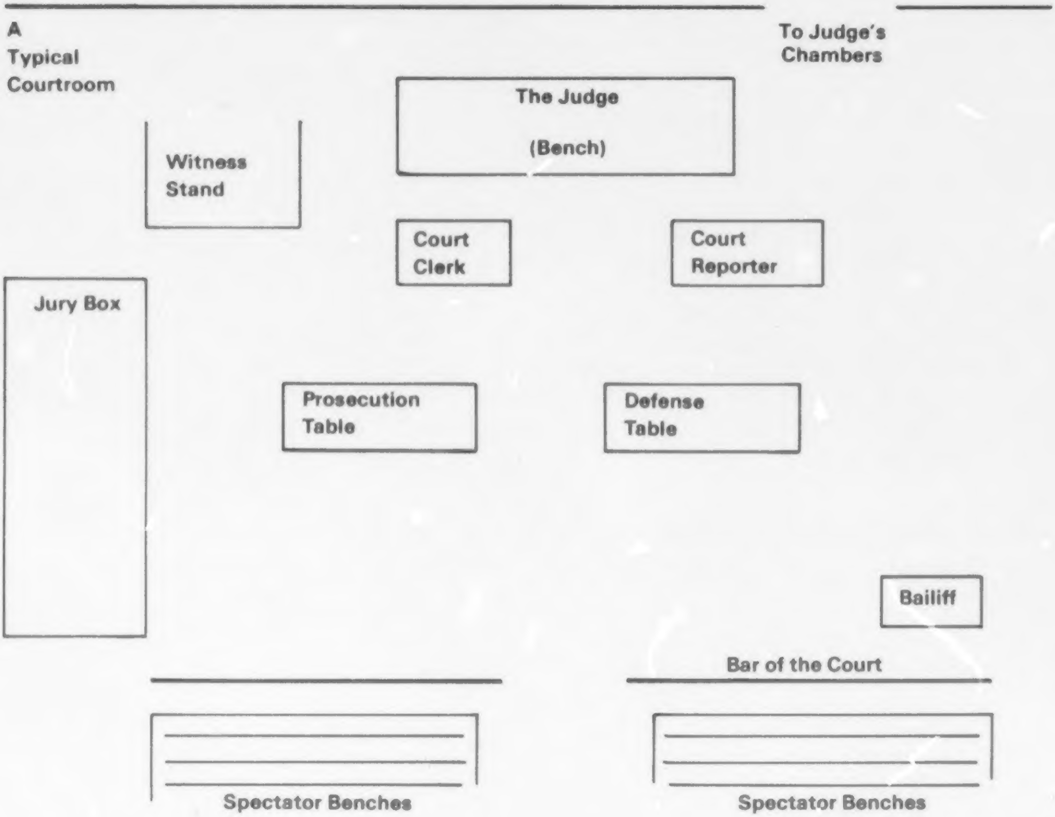
### *For Discussion*

1. In most courtrooms, the judge's bench is on a raised platform. Why do you think this is so?
2. In all courtrooms, the witness stand is on the side of the judge's bench closest to the jury box. Why do you think this is so?
3 *A Courtroom of the Future*

In the last few years, a number of criticisms have been leveled at the design of typical courtrooms. They include:

- Courtrooms are too formal and inhuman
- Courtrooms do not make adequate provisions for victims and their families
- Current courtroom design does not take into account recent technological developments including use of video tape, accoustical devices, and computers.

Imagine that you are an architect with the task of designing a "Courtroom of the Future." How would you address these criticisms? Design a courtroom that would best suit the needs of participants and the pursuit of justice. Make diagrams and share them with the class.



A Typical Courtroom

To Judge's Chambers
The Judge
(Bench)
Witness Stand
Court Clerk
Court Reporter
Jury Box
Prosecution Table
Defense Table
Bailiff
Bar of the Court
Spectator Benches
Spectator Benches

The major participants in a criminal trial as seen from the judge's bench. [CRF Photos]

## Case Notes/The Trial of Thomas Carter

Mixed feelings of dread and relief filled Thomas Carter as he climbed the wide steps leading to the massive courthouse door. In the weeks since the shooting he had thought of little else. His mind played these events over and over again. Often, he hoped for the trial to start—only when it was over could his life begin again. There had been delays. Motions were made and extentions of time granted. Though he had complete trust in his lawyer, he wished she could move things along faster. Now, at last, his trial would begin. Today was the day.

Inside the main lobby of the courthouse, Tom's eyes were greeted by a blur of moving figures. The footsteps of people going about court business echoed off the cold marble walls. The drone of a hundred conversations filled his ears, yet he and his parents barely spoke at all. They were too occupied with trying to find the right courtroom by the appointed hour, 9:00 am.

At last they found it, Department D, Criminal Trials Division. Tom breathed a sigh of relief when he saw Ms. Jaffe leaning against the court rail.She smiled as he approached and directed his parents to seats in the spectator gallery directly behind the defense table.

Although she had already prepared Tom for what would take place at his trial, she briefly described it all again. He listened carefully, vaguely comforted by the confidence in her voice, until she repeated what the charge would be: "Second degree murder." No matter how she said it, it made the color drain from his face. Ms. Jaffee reached across and patted his arm. "It's a serious thing, Tom," she smiled, "but they haven't proved anything yet."

Just then the clerk stood up and said in a loud voice: "All rise and come to order. The Superior Court is now open and in session. The Honorable Judge Coghlan presiding. All persons having business before the court come to order."

Tom looked up just in time to see a figure in black robes enter from a door behind the bench and sit down. She softly tapped her gavel several times and said, "The case of *People versus Carter*. Is the State ready?"

The prosecutor said, "The State is ready to proceed, your Honor."

Turning to Ms. Jaffee, the judge repeated the question, "Is the defendant ready?"

Ms. Jaffee spoke in a loud, firm voice, "Yes, your Honor."

The trial of Thomas Carter had begun.

***For Discussion***

1. What is the charge in the Tom Carter case? What are its elements?
2. Review "The Trial" Key Step. What will happen next in Tom Carter's trial?

## Case Notes/Jury Selection

Juries are composed of people who live in the defendant's community. Citizens are selected at random to serve on juries. Their names may be gathered from voter registration lists or drivers license lists, depending on the state. These citizens are then called to jury duty. When a case is ready to go to trial, a group of up to 40 from the jury pool go to the courtroom where the trial is to take place. The court clerk draws the names of 12 of them (called prospective jurors), and asks them to sit in the jury box. Prospective jurors then take an oath promising to answer truthfully the questions put to them by the judge and lawyers in a case.

Next comes the *voir dire*, or questioning of the prospective jurors, by the judge and attorneys for both sides. The judge starts the voir dire by telling them the charge(s) against the defendant and by asking them their name, age, address, occupation and previous jury experience. The judge might also inquire if there is any reason why they should not be jurors in the case to be tried. (For example, a mother who has suffered the death of a small child might be too sympathetic to Joyce Ann Miller's family to be a truly impartial juror.) The judge will excuse prospective jurors from a case if their answers indicate a bias or prejudice towards one side or the other. Prospective jurors may also be excused if they would suffer economically due to the length of the trial. The excused jurors, however, may have to serve in another case.

If the judge finds no reason to excuse a prospective juror, the attorneys for both sides generally get an opportunity to question them in greater depth. Attorneys can raise challenges to a juror and thus have him or her excused from a case. There are two types of challenges. A "challenge for cause" occurs when a lawyer claims the prospective juror does not meet the state's (or federal government's) legal requirements or is biased and could probably not reach an impartial verdict. After the attorney explains his or her reasons for challenging for cause, it is up to the judge to make the final decision whether to excuse or accept the prospective juror. Usually there is no limit on challenges for cause.

A "peremptory challenge" occurs without any explanation from the attorney. When a lawyer makes a peremptory challenge, the prospective juror being questioned is automatically excused. However, each side has only a limited number of these challenges.

The voir dire continues until 12 jurors (in some jurisdictions juries can be made up of 6 jurors depending on the case) and 2 alternates have been chosen. In some cases, especially those that have been highly publicized, lawyers challenge many prospective jurors before a full jury is selected. This process may take anywhere from a few hours to many days to complete. Once the jury has been chosen, it is *empanelled* ("made official") by taking another oath. Jurors swear that they will try to reach a fair and impartial verdict based solely on the evidence that is presented during the trial.

### *For Discussion*

1. Contact or visit the clerk of your local courts or a trial attorney and find out:
   - What are the legal qualifications (e.g., age, residency, etc.) in your state?
   - Who is automatically exempt from jury duty in your state? Why do you think those people have been exempted? Do you agree or disagree with the rationale?
   - Is there any limit on the number of challenges for cause or peremptory challenges that an attorney may raise in your state? If so, explain.
   - Are juries of less than 12 people used in your state? If so, in what cases are the smaller juries used?
   - Are unanimous jury verdicts required in your state?
2. According to some commentaries, the goals of the judge, prosecution and defense in criminal trials are quite different even as early as the jury selection stage. What differences might they have in regard to jury selection?

During *voir dire* a jury is selected. [UPI]

## ▶ Choosing a Jury/ A Simulation

In this activity you will participate in simulated jury selection for the Thomas Wade Carter trial.

1. In advance of this lesson, invite an attorney to attend your jury selection simulation and play the role of the judge.
2. Assign the class members the following roles:
   - 2–4 prosecuting attorneys
   - 2–4 defense attorneys
   - 14 prospective jurors
   - 1 court clerk
   - observers (remainder of class)
3. Have students read their appropriate role descriptions which follow. In addition, students playing lawyers should read the materials on "How to Ask Effective Questions" and "Sample Questions for Lawyers in a Criminal Case."
4. The court clerk should:
   - swear in the prospective jurors before the voir dire begins
   - call the first prospective juror (by name) to the jury box.
5. The judge should tell all of the prospective jurors the charge against Tom Carter, then ask the first prospective juror some introductory questions.
6. Prosecutors, then defense attorneys, question the first prospective juror and either inform the judge that the juror is acceptable or raise a challenge to him or her. If a challenge for cause is raised, the judge should rule on it. Each side is allowed only one peremptory challenge.
7. Repeat steps 4 and 5 above until all of the prospective jurors have been questioned. Observers should watch the proceedings carefully and then complete the "Observer Evaluation Form."
8. Discuss the voir dire procedure with the entire class, using the observers' evaluations of the questioning to spark students' comments. Ask your visiting attorney to tell how this simulation compared with real voir dire in your local courts and his or her views on the fairness and effectiveness of the procedure.

### Role Descriptions

***Lawyers for both sides***

These teams of lawyers will question each prospective juror searching for persons to accept or challenge for cause. Before the simulation begins, the lawyers should prepare a list of questions to ask the prospective jurors.

*How to Ask Effective Questions*

The following list should be used by the attorney role-players in preparing and asking effective questions. In addition, observers should use this list as a basis for evaluating the questions asked by the attorney role-players.

1. Plan most of your questions ahead of time. Make sure that they are precisely worded.
2. Begin with questions that are more basic and deal with a juror's background. Then, ask more advanced questions that deal with a juror's feelings about elements in the case.
3. Always keep in mind the purpose of the question when you are formulating it.
4. Individualize your questions. Re-word questions that are too long or too complex if an individual juror does not understand them.
5. Develop questions that call for a short response. Don't include too many things in one question.
6. Avoid questions that require a single "yes" or "no" answer. You do not want to limit a juror's response. Prepare questions that allow the juror to express his/her feelings in his/her words. For example, the question, "Do you have any prejudices against insurance companies?" might be changed to the following: "What is your opinion of insurance companies?"
7. Explore incomplete answers. If a juror states that he doesn't know an answer, you should ask questions to find out why this is so.
8. Unless it is crucial to your case, try to avoid questions already addressed to a juror by another attorney. There is usually no need to go over the same ground twice.

*Sample Questions for Lawyers: Criminal Case*

1. Are you married? Do you have any children? If so, what are their ages?
2. What type of work do you do?
3. Do you belong to any union?
4. What is your educational background?
5. Have you ever had any jury experience before?
6. Would any of the criminal cases you heard in previous jury duty limit your ability to sit on future cases?
7. Was there anything about your previous jury experience that would lead you to feel that you may have some prejudices either for or against the prosecution? For or against the defendant?
8. Do you have an opinion on this case?
9. Is there anything about what you have

seen since you came for jury duty that would lead you to feel that you have an opinion on this case?

10. Was there anything in the news media, television and radio that led you to believe the defendant was guilty or not guilty?

11. Do you believe that the defendant is innocent until proven guilty?

12. Would you tend to believe the police officers in their testimony more readily than you would a person who was not a police officer?

13. Were you ever connected with any type of police force?

14. Do you have any immediate relatives who would have any special interest in seeing the jury reach a verdict either for or against the defendant in this case?

15. If you are chosen as a juror in this case, will you stand on your own individual analysis of the evidence and not be swayed by the emotions of other jurors?

### *Court Clerk*

The court clerk will ask all the prospective jurors before the voir dire process begins to raise their right hand and state: "I solemnly swear I will answer all questions truthfully and to the best of my ability." The court clerk will also call each prospective juror, in turn, to the witness stand for voir dire questioning.

### *Prospective Jurors*

Each student should assume the role of one of the prospective jurors described in the "Biographies" below and answer the judge's and attorneys' questions, accordingly.

*Biographies of Prospective Jurors*

1. Michael: Caucasian, 38 years old, junior high school education. He is a third cousin to Tom Carter, but has never met him. He is a mechanic, married with five children and is a non-drinker. He has no prior jury duty.

2. Ralph: Latino, 43 years old, married with four children, college education. Ralph is a union leader and an officer in his United Auto Workers local. He has no prior jury duty.

3. Judy: Judy is of Greek descent, 22 years old, and single. She attends law school and wants to become a criminal defense lawyer. She lives with her parents, does not work, and has no prior jury duty.

4. Bob: Caucasian, 24 years old, single. High school graduate. Bob is a construction worker and has no prior jury duty.

5. Richard: Caucasian, 38 years old. He is married with six children and is an attorney-at-law.

6. Rosita: Mexican-American, 30 years old, married with five children. She finished high school, has been married for five years, and has been a housewife the whole time. Her niece was once wounded in a "drive-by" shooting by a youth gang. She has served on one prior jury, which heard a criminal prosecution for being drunk in a public place. She voted to convict.

7. Bernice: Black, 39 years old, married with one child. College graduate with a B.A. in English. Bernice is a counselor at Freedom High School, where she has worked for the past 13 years. She has no prior jury duty.

8. Russell: Caucasian, 57 years old, college graduate. He has been a vice president in charge of a large business corporation for ten years. He is married with two children and is a former alcoholic. No prior jury duty.

9. Carol: Black, 39 years old, divorced three years ago, with one child. Protestant. She is a marketing analyst, but is currently unemployed and is receiving unemployment benefits. Active in the feminist movement and the Black Community Action Council. She has no prior jury duty.

10. James: Caucasian, 58 years old, high school education, Irish descent. James is a produce manager in a supermarket, is married and has one child. As a young man, he was once convicted for a misdemeanor—disturbing the peace. No prior jury duty.

12. Mary: Black, 54 years old, widow with three children who live with her. Mary has worked as an insurance agent for over 35 years. She has managed to pay off the mortgage on her modest home, and send her oldest child to college. She has no prior jury duty.

13. Larry: Black, 38 years old, married with four children. He is a computer programmer. No prior jury duty.

14. Priscilla: Caucasian, 62 years old, widow, ex-college professor. She derives her income from her pension. She has had two prior jury duties. Both cases involved Grand Theft Auto, and she voted to acquit both times.

***Observers***

As part of the audience in the courtroom, you will be in a position to observe all of the role-players. After the prospective jurors have all been questioned, it is your job to evaluate what has happened. This checklist should help you focus in on the key issues. Then you will present and discuss your impressions with the entire group at the end of the simulation.

## Observer Evaluation Form

1. Put a (+) in front of the following role-players who were most realistic. Put a (–) in front of the groups that were least realistic.

............ prospective jurors
............ lawyers
............ judge

2. The jurors who were most realistic in terms of the person they were to portray were:

..............................................................................................................

..............................................................................................................

3. Based on the jury that was finally selected, who do you think will win this case? Why?

..............................................................................................................

..............................................................................................................

..............................................................................................................

4. An example of an effective question asked by the defense attorney is:

..............................................................................................................

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5. An example of an effective question asked by the prosecuting attorney is:

..............................................................................................................

..............................................................................................................

..............................................................................................................

6. A good question that was not asked of the prospective jurors is:

..............................................................................................................

..............................................................................................................

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## ▶ Opening Statements/ An Activity

Once the jury has been selected and empanelled, the attorneys for both sides deliver an *opening statement* about the case to the jury. The purpose of the opening statement is to outline the facts that the attorneys expect to prove during the trial. An opening statement should present the jury with an orderly, easy-to-understand and neutral version of the case from the attorney's perspective. It should not be emotional, draw conclusions or inferences from the facts, or "plead" a certain point of view to the jury. These matters can be dealt with during the cross-examination of witnesses and in the closing arguments.

In criminal trials, the prosecuting attorney presents the first opening statement. Usually, the defense attorney gives his or her opening statement immediately afterwards. However, the defense may choose to wait until the prosecution has called all of its witnesses and the defense is ready to present its *case-in-chief.* Attorneys often begin their statements something like this:

> "Your Honor, ladies and gentlemen of the jury, opposing counsel, my name is [full name] , representing the [People of the State of — or Defendant's name] in this action."

The attorneys then turn to the jury and begin their statements. Opening statements often include such phrases as:

- "The evidence will show that . . ."
- "The facts will prove that . . ."
- "Witness [name] will be called to testify that . . ."
- "The defendant will explain . . ."

**Writing an Opening Statement**

To prepare an opening statement, an attorney must understand and be able to organize and outline the entire case he or she intends to prove at the trial. In this out-of-class activity, you will prepare an opening statement for one side of the Thomas Wade Carter case. Follow the guidelines for preparing a good opening statement from above.

**To Complete the Assignment**

1. Divide the class in half: one half to take the role of lawyers for the State, the other for the defense.
2. At home, list the most important facts of the Thomas Carter case *from your assigned point of view* (prosecution or defense).
3. Write a 1–2 page opening statement from your assigned point of view.

**In-Class Debriefing**

1. Several students from each point of view should stand and deliver opening statements to the rest of the class.
2. As a class, select the best opening statement given for each side on the basis of: a) use of facts, b) clarity, and c) presentation.

## ■ Case Notes/"The Evidence Will Show . . ."

Evidence is all of the means by which facts are proved or disproved in a trial. The jury (or judge in non-jury trials) must base its verdict solely on the evidence presented during the trial. Testimony of witnesses, physical objects such as weapons, drugs, clothing and other items, documents and drawings—these are all forms of evidence that the fact-finder considers and weighs in reaching a verdict.

***There are two basic kinds of evidence: direct and circumstantial.***

In a criminal case, *direct evidence* is evidence of one or more of the elements of a given crime. For example:

- Will sees Marie point a gun at Marsha and pull the trigger. In a trial for murder or manslaughter, Will's testimony about what he saw Marie do would be *direct evidence* against her.
- Miguel hears Darren scream at his neighbor, "I'm going to take this bat and kill you, old man!" In a trial for assault, Miguel's and the old man's testimony would be *direct evidence* against Darren.

*Circumstantial evidence* in criminal cases is evidence which *indirectly* supports one or more elements of a crime. For example:

- Will sees Marie with a gun in her hand standing over Marsha's dead body. In a trial for murder or manslaughter, this would be *circumstantial evidence.*
- Miguel sees Warren running away from the old man's house with a bat in his hand. In a trial for assault, this would be *circumstantial* evidence.

It is possible for the same evidence to be both direct and circumstantial. It all depends on how it is used. Imagine that Brad's fingerprints are found on a murder weapon. The fingerprints are direct evidence that Brad had had possession of the weapon. It is circumstantial evidence that

Brad had used it in a murder.

The distinction between direct and circumstantial evidence may make little difference. Both are important to the extent that the fact-finder believes them to be convincing or credible in a particular case. In fact, many criminal cases are tried and won strictly on the basis of compelling circumstantial evidence.

## Rules of Evidence

There are a variety of rules which control when and how evidence (direct *or* circumstantial) may be presented in court. These "rules of evidence," as they are known, are designed to ensure that trials will be fair and orderly and increase the likelihood that the truth will be discovered. They do this, for example, by making evidence that is unreliable, unreasonably prejudicial or inflammatory inadmissable in court. Also, in some instances, the rules require that the attorneys in a trial take certain steps before they can introduce evidence.

In most situations, all evidence will be admitted into a trial unless an attorney believes that it violates one of the rules of evidence and makes an objection. Sometimes judges interject their own objections to an attorney's questions or a witness's answer. In any event, it is important for lawyers to know the rules of evidence backwards and forwards. Such knowledge gives them the best possible chance of proving their sides of the case, because they are more likely to be able to present evidence important to their case and keep out evidence introduced by an opponent which is improper and could hurt their case.

The rules of evidence in state and federal courts are very complex and often differ. On the next few pages you will find an explanation of a few of the basic rules of evidence that are followed universally in American courts.

### *1. Materiality and Relevance*

First and foremost, evidence must be *material*. Is it offered to prove some proper issue in the case? Evidence offered to prove that a defendant hates his neighbors is probably not material in his trial for bank robbery. The defendant's likes and dislikes are not in issue.

Evidence must also be *relevant*. "Relevant evidence" is that which has reasonable value in proving or disproving a disputed fact in a case. Suppose that a prosecutor is trying to prove that Bob murdered Elyse. A neighbor has testified that the murderer spoke French. Evidence offered to prove that Bob speaks French is, therefore, *material*. But what is relevant to prove that fact? Evidence that Bob owns a French poodle would not be relevant, because it has so little value in deciding the issue at hand. Evidence that Bob had a Masters Degree in French would be relevant.

Even relevant evidence may not be admissable if its value in deciding an issue (its *probative* value) is *outweighed* by its tendency to be unfairly prejudicial, confusing to the jury or a waste of time.

*How to Object*

- "Objection, your Honor. This evidence is not material to the issues of this trial."
- "Objection, Your Honor. Counsel's question calls for irrelevant testimony."
- If the objection is made *after* the witness answers: "Objection, Your Honor. The testimony is not relevant to the facts of this case. I ask that it be stricken from the record."

Once an objection on the basis of relevance is made, the judge may need help in deciding whether it is relevant or not. He or she might ask the attorney offering the evidence to explain why it is relevant. This is called laying a foundation.

### *2. Direct Examination of Witnesses*

Direct examination takes place when lawyers call their own witnesses to the stand and ask them questions.

#### a. *Form of Questions*

Generally, attorneys must ask questions that evoke a narrative answer from the witness (one not too long or rambling). Leading questions may not be asked. A leading question is one that suggests the desired answer. It usually elicits a "yes" or "no" answer. Often, leading questions are really statements with something like, "Isn't that right?", "Isn't that so?", or "Didn't you?" tacked on the end. For example, this question would be proper on direct examination (assuming that the fact was in issue): "Mr. Stevens, when did you and your wife adopt Charles?" This one would be improper: "You and your wife adopted Charles two years ago, didn't you, Mr. Stevens?"

*How to Object:*

- "Objection, Your Honor. Counsel is leading the witness."

#### b. *Character*

Unless a person's character is at issue in a case, evidence concerning it is not admissible. For example, Lucille sues her local newspaper for libel because one of its columnists called her "the mayor's dishonest wife." Here, character is an issue.

*How to Object:*

- "Objection, Your Honor. The witness' character is not at issue in this case."

#### c. *Refreshing Recollections*

Imagine that you are a witness of a hit-and-run accident. Two years later, the driver of the car comes to trial. The prosecutor calls you to the stand and asks you to describe what you saw. You give as many details as you can, but when the attorney asks you what the license plate number was on the car, you draw a blank. "I know I saw it and I know I told you when you talked to me after the accident," you answer, "but it's been so long—I just can't remember the number."

This is not an uncommon situation. Civil cases often take between one and three years before they actually get to court. Criminal cases also can be delayed. In either situation, witnesses may have a hard time recalling the specific details of events that occurred months or years earlier. In addition, witnesses may be so nervous that their memories fail them. The rules of evidence deal with this problem by allowing attorneys to help their witnesses remember. (This is called "refreshing the witness' recollection.") In the hypothetical above, the attorney could take a typed copy of the statement you made to her near the time of the accident, mark it as an "exhibit," have you read it, and then take the statement away. She could then ask you the question about the license plate number again. "*Now* I remember," you tell her. "The number was OJ 489." Although the pre-trial statement can be used this way, it is not entered into evidence.

### 3. *Cross Examination of Witnesses*

After the direct examination of each witness, the lawyer for the opposing side cross examines him or her. Cross examination has two purposes. It is designed to: 1) clarify the witness' testimony from the other side's point of view, and 2) give the opposing side an opportunity to *impeach* (attack the credibility) of the witness.

#### a. *Form of Question*

While leading questions (e.g., "You drank like a fish that night, didn't you, Mr. Marshall?") are usually not permitted during direct examination, they *are* allowed during cross examination.

#### b. *Scope of Cross Examination*

Cross examination questions must be limited to matters that were brought out on direct examination (i.e., they may not go beyond the scope of direct examination). However, this rule tends to be broadly interpreted by most judges.

*How to Object:*

- "Objection, Your Honor. Counsel's question is going beyond the scope of direct examination."

#### c. *Impeachment*

Impeaching a witness on cross examination is designed to reduce the weight that the fact-finder gives a witness' story. Impeaching a witness can be done by asking him or her about:

- *Bias or prejudice* of the witness relating to the issue(s) or parties in a case;
- The *accuracy* of what the witness saw, heard, smelled, etc.;
- *Prior statements* that the witness made which are inconsistent with his or her testimony in court;
- *Prior criminal convictions* of the witness, but only if they relate directly to his or her truth-telling ability; and
- *Prior acts of misconduct,* but only if they relate directly to the witness' ability to tell the truth. (Such questions may only be asked if the attorney who is conducting the cross examination has information that shows that the "bad conduct" actually happened—not just a rumor or made up to make the witness look bad.)

If the witness' credibility is attacked on cross examination, the attorney whose witness has been impeached may ask more questions to try to limit the "damage" done and restore the witness's credibility. This is done on re-direct examination by the lawyer who put the witness on the stand in the first place.

### 4. *Hearsay Evidence*

In general, a witness must have personal knowledge of the facts he or she testifies about. For example, evidence is more trustworthy if a witness observed something directly ("I saw Bill steal the wallet") rather than heard something second-hand ("Mary told me Bill stole the wallet"). Second-hand statements like the latter are often hearsay evidence.

Consider some examples:

- Mr. Katzner, a witness in the murder trial of Marty Smith, tells the court that he overheard a friend of Marty's say, "Marty killed him because he had to."
- The prosecution attempts to introduce a letter written by Marty's sister which states: "Joan needed the money so she

stole it."

What do these two examples have in common? Both are examples of hearsay evidence. Neither of them is admissible as evidence in a trial. Hearsay evidence is any evidence about an out-of-court statement (verbal or written) which is offered to prove the truth of the contents of that statement. (Think about the word "hearsay." It is something "heard" out of court and "said" in court to prove that what was asserted was true.) For example, Evelyn is on trial for arson; she is charged with setting fire to the Millers' house. Mr. Norman, Evelyn's neighbor, claims that *he heard from another neighbor that: "Evelyn had always despised the Miller family."* The italicized words in the last sentence are hearsay, because they would be offered to prove that Evelyn really did hate the Millers (and thus had a motive for burning down their house). Mr. Norman's statement would not be admissible at Evelyn's trial.

a. When an out-of-court statement is offered to prove something *other than* the contents of the statement, it is not hearsay and is admissible evidence. In Evelyn's case, for instance, her lawyer could ask Mr. Norman if it was true that *he always complained to his neighbors about the loud parties Evelyn gave.* This evidence is not intended to prove that Mr. Norman actually complained about Evelyn to his neighbors. Rather, Evelyn's lawyer would be using this evidence to impeach Mr. Norman by showing that he didn't like Evelyn and was prejudiced against her.

b. One of the most commonly applied exceptions to the hearsay rule is the "admissions against interest" rule. When a party to a case makes a statement (or "admission") that goes against his or her legal interest, it is admissible evidence. If, for example, Mr. Norman claimed that Evelyn told him that she hated the Millers, this statement would be admissible because it was made by Evelyn (the defendant and a party to the case) and it goes against her legal interest (i.e., it hurts her case).

*How to Object:*

- "Objection, Your Honor. Counsel's question calls for hearsay."
- If the objection is raised after the witness answers: "Objection, Your Honor. This testimony is hearsay. I ask that it be stricken from the record."

### 5. *Personal Knowledge*

Witnesses in a trial may only testify to matters about which they have personal knowledge. Pierre could not, for example, testify that Issac is a bad driver if he had never been in a car with Issac or seen him drive.

*How to Object:*

- "Objection, Your Honor. The witness has no personal knowledge to answer the question."
- If the objection is made after the witness answers: "Objection, Your Honor. I ask that the witness' testimony be stricken from the record because he/she has no personal knowledge of the matter."

### 6. *Opinion Testimony*

With a few limited exceptions, only experts who have special knowledge of and qualifications relating to a subject can give their opinions in a trial. To be considered an expert for purposes of this rule, the individual must first be qualified by the attorney who wishes to question him or her. The attorney does this by asking a series of questions about the person's professional training and experience in a particular field, then asking the court to acknowledge the witness' specific expertise.

All witnesses (even non-experts) may give their opinions about things like color, size, weight, drunkenness, speed of a moving object-anything within the realm of a person's ordinary, everyday experience or perception.

*How to Object:*

- "Objection, Your Honor. Counsel is asking the witness to give an opinion."
- If the objection is made after the witness answers: "Objection, Your Honor. This witness was not qualified as an expert. I ask that his/her opinion be stricken from the record."

### For Discussion
### Direct or Circumstantial

Read the items below and for each one identify if the evidence described is *direct* or *circumstantial*. Explain your answers.

a Suzanne is charged with resisting arrest. Police Officer Monroe testifies that the defendant hit him with her briefcase after he had stopped her on the highway for speeding.

☐ Direct ☐ Circumstantial

b. Charles is on trial for vandalism. An expert testifies that the color and composition of the paint found on the school building is identical to that of a can of paint found in Charles' bookbag.

☐ Direct ☐ Circumstantial

c. Jennifer is on trial for the burglary of a local record shop. Mrs. Ramirez testifies that she saw Jennifer's car parked outside the record shop at the time the burglary is believed to have taken place.

☐ Direct ☐ Circumstantial

d. Jeff is charged with the sale of marijuana. An undercover narcotics agent testifies that Jeff handed him a large bag of marijuana and took $2000 in cash from him.

☐ Direct ☐ Circumstantial

e. Danny is on trial for kidnapping a two-year-old girl. Ms. Joseph, Danny's landlady, testifies that she saw Danny loading an unusually large bundle covered with a sheet into his car just minutes after the crime was reported by the victim's parents.

☐ Direct ☐ Circumstantial

(See answer section.)

### *Objection/An Activity*

The trial situations below are based on the Thomas Wade Carter case. Check whether or not an objection should be made in each situation, then give a reason for your answer.

a. Ms. Karen Miller testifies: "I am convinced my little girl was intentionally killed by the Carter boy."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

b. Joel Washington testifies: "A friend of mine said he saw Oscar hit Tom over the head with a beer bottle."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

c. The prosecutor asks Gail Duran: "What kind of potato chips did you serve at your party?"

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

d. Ms. Karen Miller testifies: "I told the police officer that I thought whoever shot Joyce was on drugs."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

e. On cross examination, the attorney asks Gail Duran: "Explain why you didn't stop the car when you heard the explosion behind you."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

f. Ms. Karen Miller testifies: "Joyce was shot with a 12-gauge shotgun."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

g. Joel Washington testifies: "Oscar Hanks always parks his truck across the street from his house. It must have been there that day when Joyce Miller was shot."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

h. Lieutenant Tony Jackson of the police department testifies: "We know that Tom Carter had connections with drug dealers in the area."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________

______________________________

i. One of the guests from Gail Duran's party testifies: "Tom Carter told me after the fight that he was going to fix Oscar Hanks once and for all."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________________

______________________________________

j. A neighbor of Ms. Miller states that a car with a gun sticking out of the back window drove by at about 15 miles per hour.

Objection? ☐ Yes ☐ No Reason: ____________

______________________________________

______________________________________

k. On direct examination, Tom's attorney asks him: "You never intended to shoot anyone, did you?"

Objection? ☐ Yes ☐ No Reason: ____________

______________________________________

______________________________________

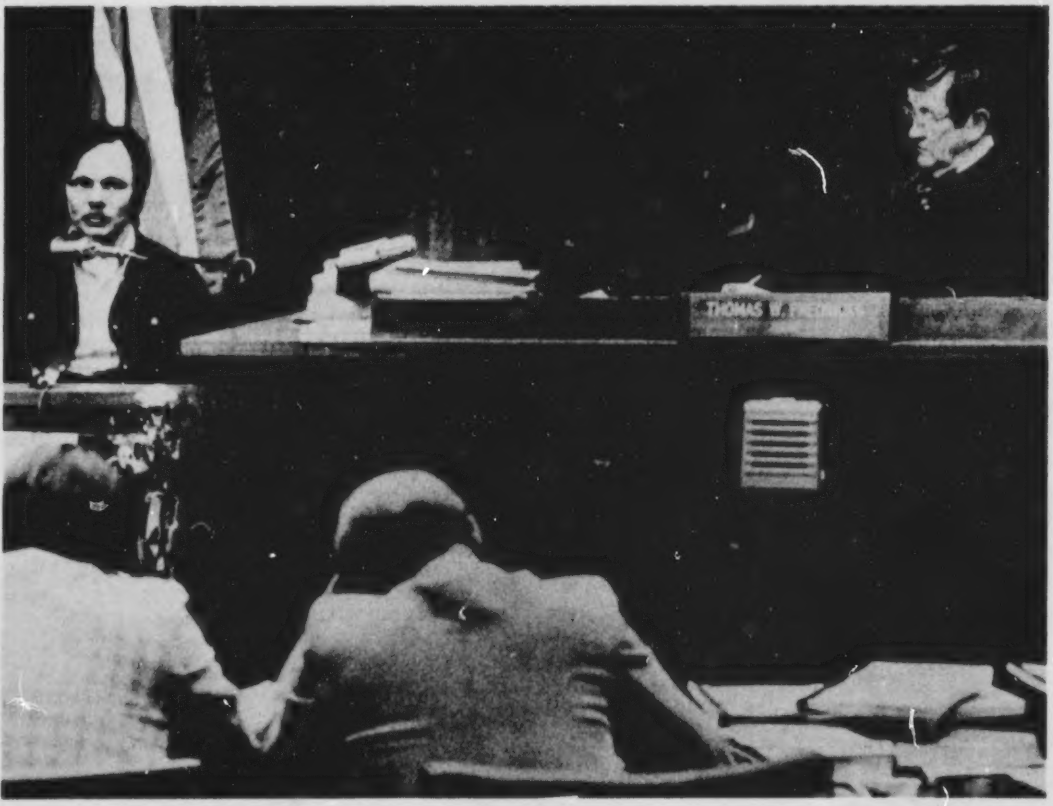
l. Joel Washington testifies: "If you ask me, a shotgun is effective up to about 20 yards."

Objection? ☐ Yes ☐ No Reason: ____________

______________________________________

______________________________________

(See answer section.)



In the examination of witnesses, attorneys must observe the rules of evidence. [UPI]

## ▶ Cross Fire/An Activity

Now that you've had a chance to test your understanding of some of the more basic rules of evidence, take the role of attorneys and prepare to examine witnesses in the case of Tom Carter.

**How to proceed:**

1. It is recommended that a lawyer or law student be invited into class to work with the attorney groups and act as judge during witness direct and cross examination. (If none is available, the teacher should take the role of judge.)
2. Organize the class into the following groups:
   - Six teams of prosecutors (numbered 1–6) consisting of 2–3 students each
   - Six teams of defense attorneys (numbered 1–6) consisting of 2–3 students each
   - Six Witnesses
3. Assignments:

*Witnesses*

Select one of the six witness descriptions on pages 108–109 and study it carefully. For the purposes of this activity, try to become the character described. Be prepared to answer questions that both the prosecuting and defense attorneys might ask you. When you are on the stand, it will be your job to recall the events leading up to and taking place on the evening Joyce Miller was shot and killed. Do not add anything to the facts that are contained in your witness statement.

*Attorneys*

Teams of attorneys, prosecution and defense, have the following assignments:

Prosecutors:
Team 1 Direct examination of Joel Washington
Team 2–Direct examination of Gail Duran
Team 3–Direct examination of Lt. Tony Jackson
Team 4–Direct examination of Ms. Miller
Team 5–Cross examination of Tom Carter
Team 6–Cross examination of Lillian Sweet

Defense Attorneys:
Team 1–Direct examination of Tom Carter
Team 2–Direct examination of Lillian Sweet
Team 3–Cross examination of Joel Washington
Team 4–Cross examination of Gail Duran
Team 5–Cross examination of Lt. Tony Jackson
Team 6–Cross examination of Ms. Miller

To prepare to examine witnesses, carefully review: 1) "The Evidence Will Show . . ." so that you can raise or counter objections, and 2) the statement of the witness you are assigned.

Each of the teams should *develop questions* for the character they are assigned to, keeping in mind the rules of evidence and their team's overall strategy (or "theory") of the case. The prosecution must prove Tom Carter guilty of murder beyond a reasonable doubt. They must not only bring up evidence in their favor but anticipate and attempt to "dilute" the impact of the evidence against them. The job of the defense is to raise every reasonable doubt they can as to Carter's guilt. In most states, when a defendant is charged with murder, he or she could be found guilty of manslaughter instead. Since Tom Carter has no alibi and doesn't deny being in the car with the shotgun in his hand, the case will boil down to the issue of Carter's *intent*. The prosecution will try to prove that Carter knew exactly what he was doing and intended to shoot the gun. The defense, on the other hand, will try to show that Carter didn't really mean to hurt anyone and that the gun went off accidentally.

Since cross examination is supposed to be limited to the scope of direct, it is difficult to write cross examination questions in advance. However, the witnesses' statements should give you an idea of what witnesses are likely to be asked on direct, and you can anticipate and write cross examination questions accordingly. You should then be alert during the direct examinations so you can get rid of any cross questions you've developed that are not appropriate. Also, be prepared to "object" to any statements you believe violate the rules of evidence described on pages 101–104.

4. Examination Procedures:

When all of the teams have developed their questions, role-play the examination of the witnesses. The team that is assigned to cross examine a particular witness should be primarily responsible for raising objections to the direct examination, although *all* students on the opposing team may do so. Likewise, the team that is assigned to direct examination of a particular witness should be responsible for raising objections to the cross examination of their witness. The visiting attorney or law student should rule on the objections and help debrief the activity.

5. After all witnesses have been examined and cross-examined, discuss:

- Which witnesses were most important to the prosecution and defense? Why?
- Which questions were most effective during the direct examinations? During the cross examinations?
- Which objections were raised most often? Why do you think this happened?
- What characteristics do you think tend to make a witness seem believable? What characteristics detract from witnesses' credibility?
- What qualities would a person need to be a successful trial lawyer? Explain.

**Statement of Ms. Karen Miller**

"My name is Karen Miller. I am 25 years old and divorced.

"I was home on the evening of July 6, 1982. Around 7:00 pm Joyce was playing in the front yard. I asked her to close the front gate and come inside the house, since it was her bath time. As I watched her go to the gate, a black car slowly drove down the block. I think it was a late model Pontiac, but I'm not really sure. Suddenly, the barrel of a rifle or shotgun was pointing from the car window right at Joyce. Before I could say or do anything, there was an explosion, and the car took off quickly.

"At that instant I looked at Joyce and saw her fall to the ground. Horrified, I ran to her and saw blood all over her face and body. She died in my arms before the paramedics arrived.

"I can't describe the occupants of the black Pontiac. Still, I think the driver was a young woman.

"A red Toyota truck was parked in front of my house that evening. I believe it belonged to a teenager named Oscar who lives across the street."

**Statement of Joel Washington**

"I am Joel Washington and I am 21 years old. I have known Tom for a few years, but we're not close friends.

"On the evening of July 5, 1982, I attended a party at Gail Duran's house. I and most of the others at the party drank beer for several hours. Around 3:30 am, a fight broke out. I was not involved in the fight, but I saw Tom Carter get hit over the head with a beer bottle. I did not know who did it. I and some of the others at the party took Tom Carter to the hospital for emergency treatment. On the way to the hospital, Carter kept asking who hit him with the bottle. He was really angry. The people in the car suggested several names, including Oscar Hanks."

"The next day about 5:00 pm, Tom Carter came over to my apartment. Carter was still very angry about what had happened the night before. I know from past experience that Carter is the type of guy to carry a grudge. He's a real hothead. He was always getting into fights with guys at school and in our neighborhood. Carter told me that he thought he knew the guy who split open his scalp. He said he thought the guy was Oscar Hanks. Carter told me, 'I'm going to put a scare into that guy that he won't forget.'

"We watched a video recording of a movie for a while and had a Cola. Carter was really nervous. A little later Carter started asking me about my gun collection. I am a hunter and collect rifles and shotguns. Carter was especially interested in one of my shotguns. He asked me to show him how to work it. He also asked me how far a shotgun would shoot. I responded that a shotgun would be effective up to about 20 yards. About 6:00 pm Carter left my apartment."

**Statement of Gail Duran**

"My name is Gail Duran. I am 17. I have been dating Tom Carter for about a year.

"On the evening of July 5, 1982, I had a party for about 50 of my friends while my parents were away on vacation. During the party a lot of people got drunk on beer. Sometime around 3:00 am a fight broke out involving about a dozen guys. Tom was hit on the head with a beer bottle. There was blood all over the place. I asked Joel Washington and some others to take Tom to the hospital while I tried to get everybody out of the house before the police came.

"The next day Tom called me to say he was all right, and would be over to see me later on. Around 6:30 pm, Tom arrived at my place. He was very upset about getting hit the night before. He said he thought he knew who had hit him with the bottle. He said it was Oscar Hanks. Tom then asked me to go for a ride with him. I agreed to go with him.

"Tom asked me to drive his car while he sat in the back. Tom owns a 1980 Pontiac Firebird. He told me he wanted to look for Oscar Hanks. He gave me directions to drive to Fourth Street. While driving down Fourth Street Tom said, 'Hey, that's his truck. Slow down, Gail.' As I slowed down I noticed for the first time that Tom had a shotgun in the back of the car with him.

"At this point I really got scared, and began to swerve down the street. I had never seen Tom act this way before. Then there was a loud bang, and Tom yelled to me, 'Get us out of here, fast!' I managed to drive out of the neighborhood and then stopped on a quiet street. Tom got into the driver's seat and took me home.

"On the way home, Tom told me that the shotgun just went off by itself, but he did not think he had hit anything. I did not actually see the shotgun discharge, but I believe that the swerving motion of the car must have caused Tom to accidentally pull the trigger. Tom would never intentionally shoot anyone. He's always been a sensitive and gentle guy. Sure, he had a few fist fights when we were in high school, but he didn't mean anything by it. He's basically a great guy."

**Statement of Thomas Wade Carter**

"My name is Thomas Wade Carter, age 18. I have recently graduated from high school, and work at an auto parts store.

"I was totally shocked when I was arrested for shooting a little girl. I have never been in serious trouble before. I was suspended from high school once or twice because of problems with other guys, but they always started the fights, not me.

"Gail Duran is my girlfriend. She and I have been going together for about a year. I went to her party on July 5, and had a good time drinking beer with my friends until I became involved in a fight with a dozen other guys around 3:00 a.m. During the fight I was struck in the back of the head with a beer bottle. Joel Washington and some others at the party took me to the hospital. It took five stitches to close the wound on the back of my scalp.

"The next day (July 6), I called Gail and told her I was all right and that I would be dropping by later in the day.

"I was angry at Oscar and wanted to pay him back some way. So, I decided to take my father's shotgun and scare him a little.

"After picking up the shotgun, I stopped by Joel Washington's apartment around 5:00 p.m. I knew he was a hunter, and could tell me how to work a shotgun to make Oscar think I was serious. But I never knew knew the gun was loaded and I never meant to hurt him. Just wanted to teach him a lesson.

"From Joel's place, I then went over to see Gail. I asked her to go with me for a drive. I had her drive my car while I sat in the back seat looking for Oscar's house. I knew he lived somewhere on Fourth Street. I also knew he drove a red Toyota truck. Finally, I spotted his truck parked along the street. But the car suddenly lurched, and the next thing I knew, the shotgun went off accidentally. I panicked. I didn't know it was loaded! I told Gail to get out of the neighborhood fast. I did not see anybody in the yard where Joyce Ann Miller was killed and certainly did not aim the shotgun at her. It was an accident."

**Statement of Lillian Sweet**

"My name is Lillian Sweet. I am a retired school principal. I have a Ph.D. in educational administration from the University of Illinois. I was a history teacher and a school guidance counselor before I became a principal.

"I have known Tom Carter since he was a little boy. I've lived down the street from the Carters for almost 20 years and I was the principal of the high school that Tom attended.

"I did have to suspend him for brawling with other boys once or twice. But kids will be kids. I think Tom was just following the lead of his friends in those days. As a principal, I was not very seriously concerned about Tom's behavior. I knew he'd grow up to be the fine young man he is today.

"Tom has always been a joy to have in the neighborhood. He is kind to old people and children. He helps his mother with grocery shopping. Sometimes he even drives me to my doctor appointments if the weather is bad or he has a free afternoon.

"In my opinion, Tom could never have done what he is accused of doing. He's a very stable and responsible young man. He's just not capable of murder."

**Statement of Lt. Tony Jackson**

NOTE: For the information you will need to develop questions about Lt. Tony Jackson, see pages 79–80.

## ▶ The Defense Rests . . . / An Activity*

At the close of the defense's case-in-chief in a criminal trial it is time for the opposing counsels to make closing arguments. These arguments give the attorneys a chance to summarize the main points of their cases, review the testimony of witnesses brought out on direct and cross examination, and make a last appeal to the judge or jury. The prosecution makes the first closing argument, followed by the defense.

**Guidelines for an Effective Closing Statement** (Rating Sheet)

An effective closing statement should:

1. be emotionally charged and strongly appealing (unlike the calm and neutral opening statement);
2. emphasize the facts which support the claims of your side;
3. note weaknesses or inconsistencies in the opposing side's case;
4. summarize the favorable testimony;
5. attempt to reconcile inconsistencies that might hurt your side;
6. be presented so that notes are barely necessary;
7. be well-organized (starting and ending with your strongest point helps to structure the presentation and give you a good introduction and conclusion);
8. (prosecution) emphasize that the state has proved the elements of the crime beyond a reasonable doubt;
9. (defense) raise questions which suggest the continued existence of a reasonable doubt.

Proper phrasing includes:

"The evidence has clearly shown that . . ."

"Based on this testimony, there can be no doubt that . . ."

"The prosecution failed to prove that . . ."

"The defense would have you believe . . ."

Conclude your closing statement with an appeal to convict or acquit the defendant.

In this activity you will take the role of attorneys developing closing arguments in the case of *People vs. Carter*.

**How to Proceed**

Each student should:

1. Choose to represent either the prosecution or defense.
2. Review the witness statements on pages 108–109 and consider the main points brought out in the direct and cross examination of witnesses in the previous activity.
3. Develop a 3-minute closing argument for presentation to the class. (Be sure to follow the "Guidelines for a Good Closing Statement" from above.)
4. Select 12 members of the class to act as a jury. It is their job to judge the quality of the presentations. To do this, take a blank piece of paper and develop a "rating sheet" based on the following model:

### ***Prosecutors***

Presenter 1 (name)

1. ____________________
2. ____________________
3. ____________________
4. ____________________
5. ____________________
6. ____________________
7. ____________________
8. ____________________
9. ____________________

Presenter 2 (name)

1. ____________________
2. ____________________
3. ____________________
4. ____________________
5. ____________________
6. ____________________
7. ____________________
8. ____________________
9. ____________________

Presenter 3 (name)

1. ____________________
2. ____________________
3. ____________________
4. ____________________
5. ____________________
6. ____________________
7. ____________________
8. ____________________
9. ____________________

### ***Defense Attorneys***

Presenter 4 (name)

1. ____________________
2. ____________________
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Presenter 5 (name)

1. ____________________
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Presenter 6 (name)

1. ____________________
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Each of the numbers corresponds to one of the "Guidelines for an Effective Closing Statement." At the close of each presentation, place a check mark next to the item if the presenter's statement met the criterion.

5. Call on three prosecutors and then three defense attorneys to make closing arguments. After all have presented, poll the jury to find out which prosecutor and defense attorney made the best presentation. Jurors should explain their choices based on the listed criteria.

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*Adapted from the Constitutional Rights Foundation's *California State Mock Trial Competition*, developed in conjunction with National Institute for Citizen Education on the Law (NICEL) staff; and Eric Mondschein, Director, Law, Youth & Citizenship Program, New York.

## Case Notes/ Instructing The Jury

After closing arguments in a criminal trial, the judge gives the jury special legal instructions it must consider when arriving at a verdict. This process is sometimes called "charging the jury." The primary purposes of these instructions are to explain the law, point out the essential elements that must be proved, and show the relationship of the evidence to the issues on trial. In many states, judges frame their instructions on the basis of models adopted by the legislature. In other states judges are free to develop their own. Still, a judge must be very careful. Inaccurate or misleading instructions to the jury are the most common reason for verdicts being overturned.

Imagine you are in the jury box just as the court clerk in the case of *People v. Carter* rises and announces, "The court will now charge the jury. No one will be allowed to leave or enter the room during the charge." Judge Coghlan then gave the following instructions:

Ladies and Gentlemen of the Jury:

It is my duty to instruct you in the law that applies to this case. You must follow the law as I state it to you.

### 1. *Duties of the Judge and Jury*

In determining whether the defendant is guilty or not guilty, you—as jurors—must base your decision entirely on the evidence presented during this trial and on the law as explained by me. You must not be governed by mere sympathy, guesswork, emotion, prejudice or public opinion. You must not be influenced by the mere fact that the defendant has been arrested, charged and brought to trial.

### 2. *Evidence*

If the evidence equally supports two reasonable versions of the truth, one of which points to the defendant's guilt and the other to the defendant's innocence, it is your duty to adopt the version pointing to the defendant's innocence.

### 3. *Credibility of Witnesses*

Every person who testifies under oath is a witness. You are the sole judges of the credibility or believability of the witnesses who have testified in this case.

It should be remembered that discrepancies or differences that occur in a witness' testimony, or between the testimony of one witness and another, do not necessarily mean that a witness is lying. Failure to recollect facts is a common human experience. In addition, two persons witnessing the same incident will often see or hear it differently. You may simply have to decide which version of the facts is more believable.

### 4. *Statements of Counsel and Evidence Stricken From The Record*

You must disregard any question to which an objection was made and sustained. This means that you must not speculate as to what the witness might have said if he or she had been allowed to answer. Neither may you speculate as to why an objection was made to a question.

Any testimony or other evidence rejected or stricken from the record is to be treated as if you had never heard it.

### 5. *Presumption of Innocence—Reasonable Doubt—Burden of Proof*

A defendant in a criminal action is presumed to be innocent until proven guilty. This presumption places upon the state and the prosecution the burden of proving the defendant guilty beyond a reasonable doubt. Reasonable doubt means that after hearing all the evidence, a juror is still convinced that the defendant is very probably guilty.

### 6. *The Charge in this Case: Second Degree Murder*

Thomas Wade Carter has been charged with second degree murder. Murder is the unlawful killing of a human being with malice aforethought.

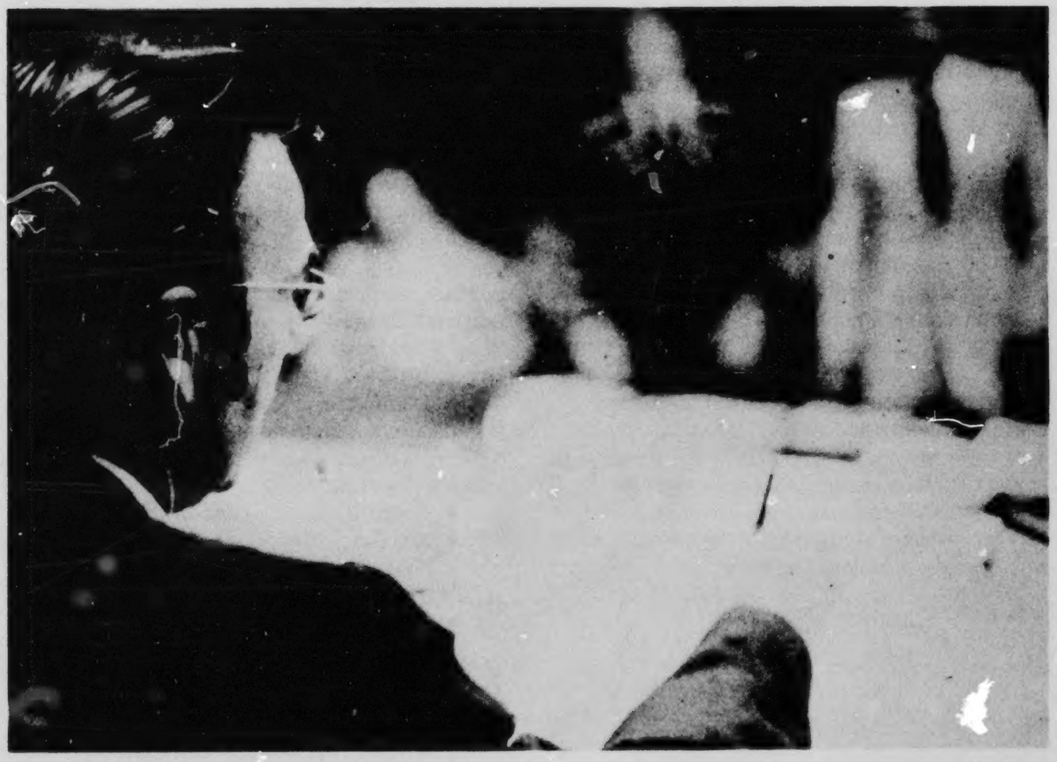
Malice Aforethought—*Malice* may be either express or implied. Malice is express when there is manifested an intention unlawfully to kill a human being.

Malice is implied when the killing results from an act involving a high degree of probability that it will result in death, when the act is done for a base, anti-social purpose and with a wanton disregard for human life.

Malice does not necessarily require any ill will or hatred of the person killed.

*Aforethought* does not imply deliberation or the lapse of considerable time. It only means that the required mental state must come before rather than follow the act.

If you find beyond a reasonable doubt by the evidence presented in this trial that Thomas Wade Carter intended to fire the shotgun that killed Joyce Anne Miller, and that the act involved a high degree of probability that death would result, and that it was done with wanton disregard for human life, you shall return a verdict of second degree murder.



One of the judge's duties is to instruct the jury about the law of the case. [CRF Photos]

### *7. Returning a Verdict of Guilty to a Lesser Charge: Involuntary Manslaughter*

Involuntary manslaughter is the unlawful killing of a human being without malice aforethought and without intent to kill. If you are satisfied beyond a reasonable doubt that the killing was unintentional and the direct result of a very dangerous and unlawful act, you shall return a verdict of involuntary manslaughter.

### *8. Doubt Whether Murder or Manslaughter*

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

### *9. Unanimous Agreement as to Offense Second Degree Murder or Manslaughter*

Before you may return a verdict in this case, you must agree unanimously not only as to whether the defendant is guilty or not guilty, but also, if you should find him/her guilty of murder of the second degree, or manslaughter.

### *10. Each Juror Must Make An Independent Decision*

Each of you must decide the case for yourself, but you should also do so only after discussing the evidence and these instructions with the other jurors.

You should not hesitate to change your opinion if you are convinced it is wrong. However, you should not be influenced one way or the other because the majority of jurors favor a certain verdict.

### *11. Concluding Instructions*

You shall now retire and select one of your number to act as foreman. The foreman will preside over your deliberations. In order to reach a verdict, all jurors must agree to the decision. As soon as all of you have agreed upon a verdict, you shall have it dated and signed by your foreman, and then shall return to announce it to the Court.

### For Discussion

1. What things *should* be considered and discussed by the jurors? What things *should not* enter into the jury's deliberations?

2. Review the definition of "beyond a reasonable doubt" in instruction #5. According to this definition, which one of the following statements would be true?

a. A juror shall vote to convict *only* if he or she is 100% sure that the defendant is guilty.

b. A juror should vote to acquit if he or she believes there is any possible chance that the defendant is not guilty.

c. A juror should vote to convict if he or she believes that a very high degree of probability exists that the defendant is guilty.

3. Review the second degree murder charge against Thomas Wade Carter in instruction #6. According to the prosecution, how was Joyce Ann Miller killed? According to the defense, how was Joyce Ann Miller killed?

## ▶ Verdict/An Activity

Imagine that you are a juror in the case of *People v. Carter* charged with rendering a final verdict. To complete this activity follow these procedures:

1. Form 2 or 3 juries of 12 students each. (Remaining students may be formed into a smaller jury.)

2. Each jury should appoint a foreman who will help lead discussions, collect signatures on and date the verdict, and deliver it to the court.

3. You may refer to the judge's instructions on pages 112–113 during your deliberations.

4. During the course of the deliberations the foreman may wish to take one or more polls to determine if consensus is reached. Remember your verdict must be unanimous for either:

- *Guilty* Second Degree Murder, or
- *Not Guilty* Second Degree Murder.

If not guilty or divided on the issue of second degree murder, then

- *Guilty* Involuntary Manslaughter, or
- *Not Guilty* Involuntary Manslaughter.

5. After about 15 minutes, the teacher (acting as judge) will ask if you have reached a verdict.

- A jury not reaching a unanimous verdict will be considered a "hung jury."
- The foremen of juries reaching a unanimous verdict will deliver it to the court along with the 12 signatures attesting to it.

6. In either case, the judge may poll individual jurors and ask each to explain the reasons for their decisions.

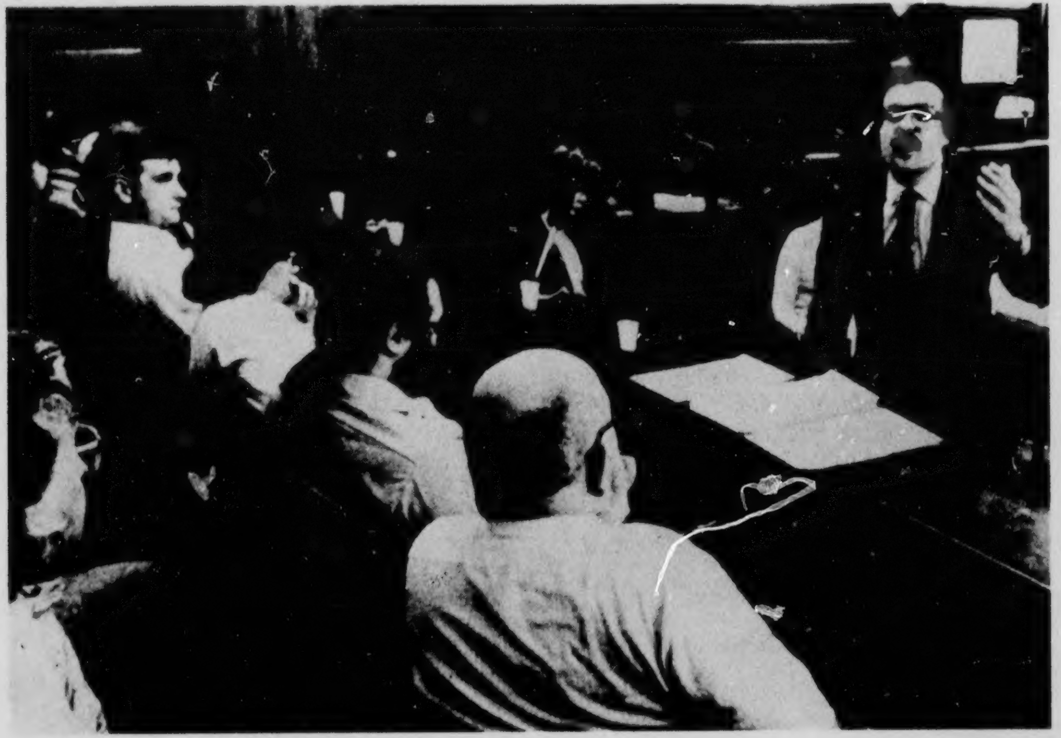
### Suggestions for Debriefing

1. If individual jurors or jury groups were divided on the verdict, discuss how it could be possible for people who have heard the same testimony and evidence to reach different conclusions.

2. Jurors might be asked to discuss how this jury activity compares to what they know about real jury deliberations. For example: were some students unable to be objective after having taken the role of the defense or prosecution? Did the jurors have too much knowledge about the case?

3. The jurors could be asked to identify the witnesses they found most credible and least credible. What makes a witness credible?

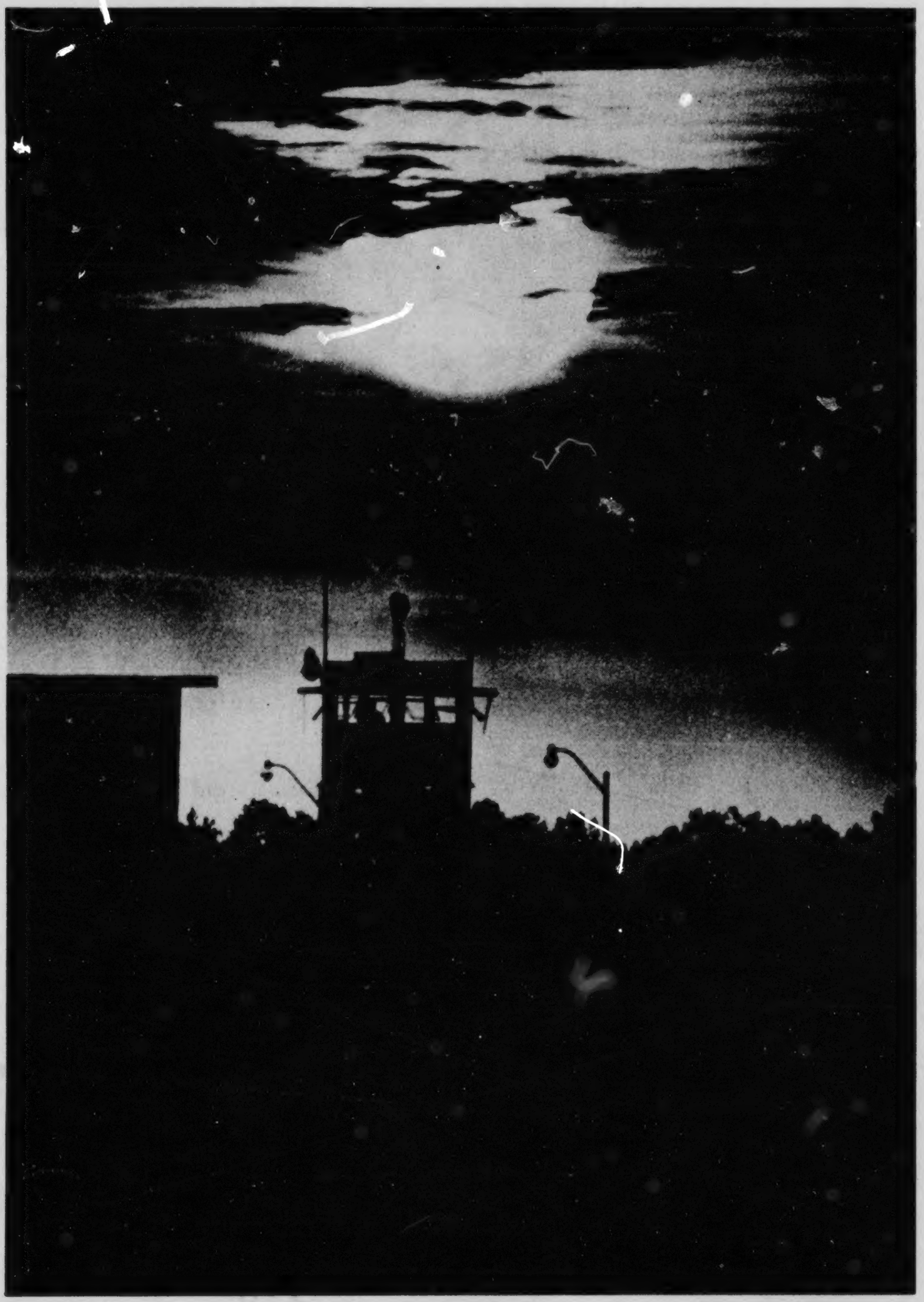
4. The students might be asked to identify orally or in writing the most difficult part of the roles they played. Students could also be asked



A prosecutor makes his final arguments in a sensational murder trial. [UPI]

to state what they learned about the job or duty of the judge, attorneys, witnesses, and jurors.

5. As a concluding activity, all students might be assigned to write an essay explaining their personal verdict in the Thomas Wade Carter case.



[UPI]

# Corrections

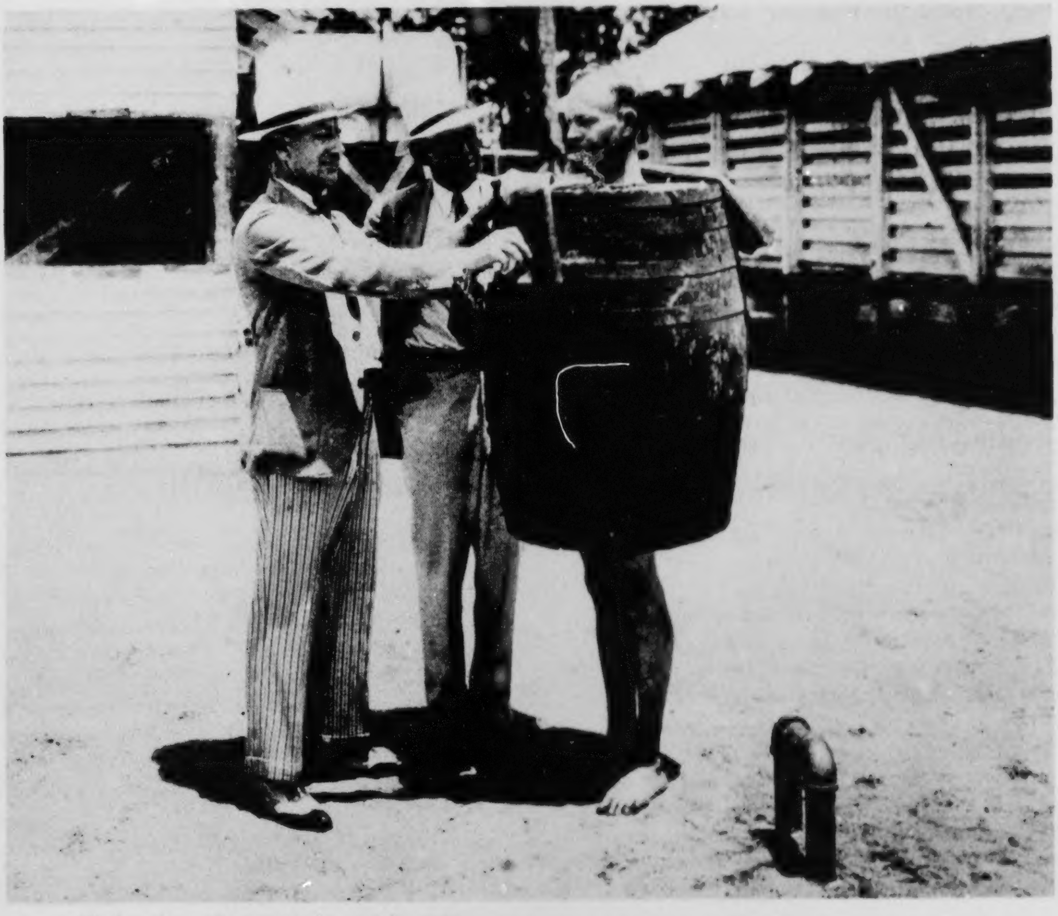
*Corrections, America's prisons, jails, juvenile training schools and probation and parole machinery, is the part of the criminal justice system that the public sees least and knows least about.*

–*The Challenge of Crime in a Free Society,* a Report of the President's Commission on Law Enforcement & Administration of Justice.

Jay is 19 years old. Today, he will appear before a judge to be sentenced. He robbed a neighborhood 7-11 store at gunpoint and is about to become a part of the vast, but largely unknown part of our criminal justice sytem known as *corrections.* Jay has a lot to think and worry about! What will happen to him? Will the judge decide that prison is his fate? After all, Jay used a gun in the commission of a crime. Or, is he to be placed in another part of the system which will give him different and less harsh treatment? Only the judge can provide the answers to these questions!

If you asked Jay's victim what he thinks should happen, you may hear a demand that Jay be sent to prison. If you asked a specialist who has studied our prison system, he or she may favor giving Jay a second chance by placing him on probation. Many experts believe that time in prison and contact with hardened criminals might only convince Jay to continue in a life of crime. In many parts of the country, Jay could be sentenced to take part in a special program where he would live in a group home and work under the supervision of a staff of trained specialists. There he would receive psychological and vocational counseling.

How are sentencing decisions made? What alternatives – prison, probation, community service – do judges have at their disposal? These questions are the focus of this chapter. We will also go "inside" to explore the past, the problems, and the possible future of our nation's prisons. Finally, you will confront what is perhaps the most hotly debated of all corrections issues – the death penalty.



The barrel sweat box was used to punish convicts during the 1930's. [UPI]

## A Brief History of Punishment in the United States

America's prison population is growing rapidly. Since 1970, the population of American prisons has nearly doubled. In 1981, the American prison population grew 12.1%, the fastest increase in the 20th century. At the present time, over 400,000 Americans are imprisoned. Nearly half are black and only 4% are women. At the present rate of growth, our prison population is expected to double again by 1988. Today, more than one out of every 600 Americans is in prison —not in jail or reform school, but in prison.* Only the Soviet Union and South Africa have higher percentages of their population locked up.

Have there always been prisons in America? Where did prisons come from? Is building more prisons the appropriate solution to the problem of criminal behavior in our society?

### Punishment in Colonial America

In Colonial America, criminals usually received immediate and harsh punishment. For minor crimes, a lawbreaker was often made subject to public humiliation. Having to stand for a period of time at the pillory or being locked up in stocks were common forms of punishment. Many towns had "ducking stools" in which a wrongdoer was bound and immersed in the icy water of a river or pond, sometimes repeatedly. Other lawbreakers were sentenced to be publicly lashed at a whipping post. Branding or mutilation of criminals was also common. For example, a petty thief might have an ear cut off or the letter "T" branded on his cheek. This not only served as a punishment to the wrongdoer, but as a warning to other thieves. In addition, it made it much more difficult for a person to continue stealing; citizens, seeing the mark, would be more observant and careful with their belongings. For many and more serious crimes, death was decreed. Public hanging was the usual method.

Some colonies had jails to house people accused of crimes until they could be brought to trial. Jailkeepers were "businessmen" and ran the jails for profit. Inmates had to pay for their own food and other necessities of life. Sometimes, poor inmates starved to death before their trials commenced. Inmates worked as laborers digging ditches, building roads, and working farms. The profits went to the jailkeepers. One person recorded seeing inmates weighed down by "iron collars and chains, to which bombshells were attached, to be dragged along while they performed their degrading service."

### Regret and Remorse: The Penitentiary

Following the American Revolution, concerned citizens demanded change in the treatment of prisoners. The Quakers, a religious group opposed to war and violence, objected to the brutal treatment of convicts. They introduced the idea of locking up criminals in order to change their behavior. The Quakers believed that criminals needed to be separated from society behind high thick walls. By being isolated from others in solitary confinement, prisoners would have the opportunity to think about their deeds and to become "penitent" (or sorry) for what they had done. Prisons thus came to be called penitentiaries.

This "reform" led to the first prisons as we know them today. In 1790, a block of cells, each six feet wide, eight feet long, and nine feet high was built in Philadelphia. The Quakers also introduced other "reforms" including separating the prisoners by sex, barring children from being sent to jail, and providing food and clothing to inmates at government expense.

The "Pennsylvania System," as these reforms were called, represented a change in the philosophy behind the corrections system. Its purpose was to punish *and* to correct the behavior of those who had violated the law so that they would not be tempted to violate the law again. This new idea for correction of criminals was adopted throughout the United States and Europe.

Unfortunately, the reforms introduced by the Quakers seldom accomplished their purpose. Prisoners locked up in solitary confinement frequently became sick, went insane or died. In 1842, Charles Dickens, a famous English writer, visited the Pennsylvania penitentiaries and reported:

> *I believe it, in its effects, to be cruel and wrong. In its intention, I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who devised this system of prison discipline . . . do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment . . . inflicts upon the sufferers . . . I hold this slow and daily tampering with the mysteries of the brain to be immensely worse than any torture of the body.*

### Leading a Useful Life: The Work System

The poor results of solitary confinement led prison officials to try a new system of corrections emphasizing work instead of isolation.

Under this system, prisoners were locked up in cells at night, but were allowed to leave their cells and work together in prison shops and eat in a common dining area during the day. However, prisoners were forbidden to talk to one another and had to serve their time in silence.

The work system was widely used and accepted. It still influences prisons today. In many prisons, inmates make such things as license plates and furniture for government offices or they perform services such as growing food for the prison population and washing the uniforms of hospital employees. Unfortunately, these jobs do little to prepare convicts for life outside of prison

### Treating Criminal Behavior: Rehabilitation

Following the Civil War, a new group of prison reformers began to question the work system. These reformers argued that criminal behavior was like a disease. They felt that prison inmates should be "treated" in order to improve their behavior and attitudes toward society. Following treatment, the reformers said, prisoners would be *rehabilitated* and ready to resume a normal life in society.

The rehabilitation idea was first tried in 1877 in a youth reformatory at Elmira, New York. At Elmira and other youth reformatories, young offenders received schooling, vocational training, health care and counseling. When the inmates could demonstrate that they were "ready" for release to the satisfaction of the reformatory staff, they were allowed to leave the facility.

Adult prisons adopted parts of the youth rehabilitation sytem. By 1918, doctors, psychiatrists, psychologists, and social workers "treated" prisoners in order to rehabilitate them. In addition, many states built separate prison facilities for dangerous prisoners, minimum security prisoners, women prisoners, drug addicts, and the criminally insane. The process of reform continues today. The question of how best to treat society's criminals is one each generation must ponder and answer for itself.

### *For Discussion*

1. What are some advantages and disadvantages of the following kinds of punishment?
    - a. solitary confinement
    - b. hard physical labor
    - c. humiliation or physical punishment
    - d. therapy
2. What other forms of punishment or treatment can you think of? What might be some of the advantages and disadvantages of these methods?
3. Discuss this statement: "The history of corrections has been one of good intentions and bad results." What does it mean? Do you agree with it? Why or why not?

## The Problem of Punishment

Society has always maintained the right to punish people who break its laws. But, what is the purpose of punishment? What is it supposed to accomplish? This is not an easy question to answer; experts and lay people alike often disagree. Over the years, a number of different theories have been advanced defining the purposes of punishment and spelling out methods for treating wrongdoers. Those advocating one approach, especially in the past, condemned the others as being unjust or ineffective.

Recently, scholars have tried to bring some order to the debate by suggesting an "inclusive theory of punishment." They maintain that one approach might work best in one situation, while another would apply under different circumstances.

Consider the following brief descriptions for each of the major theories.

*Rehabilitation*

Perhaps the most modern theory holds that the purpose of punishment is to treat and reform a lawbreaker. Advocates of this theory believe that prison or release programs should provide an opportunity for the wrongdoer to learn to become a productive member of society. Thus, the prison experience should provide job-related training, psychological counseling and educational programs in a combination best suited for the treatment of the individual prisoner. Though a noble idea, many claim that it just doesn't work in practice.

*Incapacitation (or Restraint)*

This theory is based on the idea that punishment should be aimed at isolating a criminal from society. For example, while in prison, it is almost impossible for a person to commit further criminal acts and thus society is protected. However, as most prison terms are for a set period of time, this theory does little to protect society once a convict gets out.

*Deterrence*

There are really two deterrence theories.

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[*] *Time* magazine, September 13, 1982, p. 38.

One which is called "specific" deterrence is based on the idea that by suffering a long jail term or other difficult punishment, a wrongdoer will be discouraged from committing another crime for fear of further punishment. "General" deterrence holds that if other people know that criminals receive stiff sentences for crimes, they will be discouraged from committing crimes for fear of suffering the same fate.

*Retribution*

Perhaps the oldest theory of punishment, this one is based on the idea that society has the right to revenge or retaliate against a person who commits crimes. That is, a criminal should suffer punishment in proportion to the crime he or she committed. By imposing punishment, we "get even" with criminals. The germ of this idea is contained in the ancient "eye for an eye" justice philosophies of Mesopotamian and Judeo-Christian traditions.

[UPI]

## ▶ The Student Court/ An Activity

Imagine that you are a member of a student court with the job of assigning appropriate penalties for those who break school rules. Although the school administrator handles major disciplinary matters, the student court has jurisdiction over lesser infractions. Wrongdoers may be sentenced to detention, hours of school service, loss of student body privileges or other appropriate penalties. The activity has two parts:

### *Part I*

1. Divide the class into student courts of five or six students each.
2. Appoint a spokesperson to help lead your discussion and a recorder to keep notes on your decisions.
3. Carefully review the following cases which have come before your court. (Assume that each has violated an established school rule.) Decide an appropriate and specific penalty for each wrongdoer described and be prepared to discuss them with the class.
   - Bill Hodges was caught smoking in the restroom. This is his second offense.
   - Mary Rodriguez was cited for littering the campus quad area during lunch period.
   - James Janus was 20 minutes late to his first period class three days in a row without a legitimate excuse. His teacher referred him to the court.
   - Dawn Sommerville started a food fight in the cafeteria by smashing an overripe banana in her friend's hair.

### *Part II*

1. Make headings on the chalkboard using the names of the four rulebreakers.
2. Each court should report its recommended sentence and write it under the appropriate heading.
3. For each sentence described, discuss and decide whether it best meets the purposes of: a) rehabilitation, b) incapacitation, c) deterrence, d) retribution, or e) some combination.

### *Debriefing Questions*

1. Which of the four theories of punishment comes closest to your idea of what is just? Why?
2. Which of the sentences recommended by the student courts do you think are fair? Which are not fair? Why?

## ■ Current Debates

For many years, it was assumed that the principal purpose of our correctional system was to rehabilitate. The system was organized to help convicted criminals rework viewpoints and habits so that on leaving the system, they would not again become involved in criminal behavior. For several generations, reformers have developed new programs and techniques for treating criminals. Psychological testing and therapy, vocational training, and basic or advanced educational programs are just a few of the methods employed.

Recently, however, the idea of rehabilitation for at least some kinds of criminals has come under attack. Recidivist rates (calculated on the basis of those who commit and are convicted for crimes after leaving prison) remain high. Approximately 30% of all those released from prisons will return within three years. Many experts now believe that members of this group (so-called "hardened" or incorrigible criminals) are not amenable to rehabilitation, and the only answer is to remove them from society and protect the innocent from their acts.

What about rehabilitation for other kinds of criminals—the first-timer, or one who commits a crime under momentary passion, or the unwitting or docile person who is drawn into criminal activity at the prompting of others? Rehabilitation seems a more likely approach for such criminals; after all, 70% of the prison population does not return to prison within three years. A recent Gallup poll suggests that some 70% of the American public still favor a strong emphasis on rehabilitative methods in our nation's prisons.

At the same time, society now seems more willing to straightforwardly punish and restrain without the expectation that the basic penalties will lead to rehabilitation, but instead will serve as a deterrent to repeated criminal behavior. For example, a recent ABC Poll (released in February, 1983) suggests that a great majority of the American public favors harsher sentences for criminal behavior, especially repeat criminal behavior. In a recent California election, voters passed what was known as Proposition 8. It contained a number of measures imposing harsher sentences for certain criminal conduct and limiting judges' discretion in setting these sentences. People seem to be in a mood to "get tough" on crime and criminals. These trends tend to favor the idea of incapacity, deterrence and retribution.

### Getting Tough on Criminals

One point of view holds that stiff penalties in the form of long prison sentences for criminal acts tend to deter others from committing the same crime. If, for example, a state law requires that judges send criminals who use a gun in the commission of a crime to prison for three years, it is expected that the fear of prison will reduce the use of weapons in the commission of a crime. Critics of this view argue that no evidence exists to support this notion. Moreover, it is argued that few criminals are aware of sentences, harsh or otherwise, imposed by the courts at the time of the commission of their crime. If this is true, how could harsh sentences deter them from committing crimes? Others point out that it is not the fear of harsh sentences that deters criminals, but rather the fear of being caught and convicted. Statistics show that less than one crime in ten leads to capture and conviction. It is this "low risk" factor that spurs criminal behavior, argue the critics, not the nature of the sentence.

Support for retribution in the form of harsher prison sentences also seems to be on the rise. According to this view, society has the right to punish; criminals are bad and deserve to be severely treated for their behavior. Carried to its extreme, this position would hold that even if it were proved that punishment does not deter crime, it is still society's right to punish.

Others claim that the right to retribution does not belong to society alone. Advocates of "victim's rights" and, indeed, some crime victims themselves, argue that those who suffer at the hands of criminals have a need and a right to know that their persecutors will suffer too. Without this, they claim, there is no justice in the system and victims will go on suffering. Opponents argue that retribution does not really right any wrongs and overly harsh sentences only brutalize the criminal, a criminal who will eventually be back on the street.

### Trends and Controversies

There is also general agreement that it is a relatively small number of repeat violent offenders who commit a disproportionately large amount of crime. A recent Rand Corporation study, "Varieties of Criminal Behavior," funded by the National Institute of Justice, found that "most violent predators commit hundreds of serious crimes a year." For example, criminals in the 10% who have the highest robbery rates commit over 135 robberies a year. The 10% with the highest burglary rates commit over 500 burglaries a year.

The 10% with the highest drug dealing rates make over 4000 drug deals a year.

If this "high crime" group were identified and targeted for long terms of maximum security imprisonment, other resources of the correctional system could then be applied to appropriate rehabilitation activities for the large percentage of less serious offenders. The high crime rate group would appear to be the least likely subjects for rehabilitation anyway, because ingrained behavior patterns make the success of such programs unlikely. But how can the high crime group be identified?

The Rand study suggests that a scale could be used to identify low, medium and high rate burglars and robbers, based on data from individual criminal records. A high enough score on this profile could be used to give longer terms, a lower score would add up to a shorter sentence. The idea, called selective incapacitation, involves the following factors in identifying offenders:

1. Those who have been incarcerated more than half of the two-year period preceeding the most recent arrest;
2. A prior conviction for the crime;
3. Juvenile conviction prior to age 16;
4. Commitment to a state or federal juvenile facility;
5. Heroin or barbituate use in the two-year period preceeding the current arrest;
6. Heroin or barbituate use as a juvenile; and
7. Those who have been employed less than half of the two-year period preceeding the current arrest.

A positive answer to any of the preceeding descriptions is given one point on the scale. Offenders whose scales are 0–1 are considered low rate offenders; 2–3 medium; and 4 or more, high rate offenders.

The use of such a scale raises many moral and ethical questions. A mistake in creating a profile could mean more prison time and could deny certain individuals fair treatment. Given the danger inherent in such a process, it represents an alternative which will no doubt be extremely controversial if applied.

Another controversial proposal involves the creation of a whole new prison system, or actually two prison systems. One would be used for first-time offenders who have not committed serious crimes. This "system" would focus on rehabilitation and prepare prisoners for productive lives once they were released. The other system would be reserved for hardened criminals: those who committed "serious" crimes, repeat offenders, and members of the "high rate" group. This maximum security system would serve the goals of incapacitation, deterrence and retribution.

Supporters maintain that such a specialized approach would address the needs of first-timers and protect society from those inmates who cannot be rehabilitated. Furthermore, by isolating first-timers from hardened criminals, they believe fewer would learn to live a life of crime. Detractors maintain that the astronomical costs involved in the development of two systems would be prohibitive. Moreover, the proposals ignore the possible benefits of putting resources into alternative programs, for example, community service, diversion, or release programs. Still, the public seems intrigued by such an idea. In a recent Gallup Poll, 88% of those polled favored a two-tiered system when it was described to them.

***For Discussion***

1. What are recidivist rates? Why are they important?
2. Would you favor the development of a two-tiered prison system? Why or why not?
3. Write a paragraph essay in support of or against the following proposition: *Harsh sentences will deter criminals from committing crimes and, if used, crime rates will drop.*

## Sentencing

A businessman convicted of fraud recently came before the judge for sentencing. The judge did not believe that a jail sentence would be appropriate for the businessman or benefit society very much. Instead, he set a fine of several thousand dollars and the businessman was required to speak to groups of other businesspeople about his crime and its serious consequences. Next before the judge comes a man found guilty of manslaughter. The man, while driving drunk, had hit and killed an 8-year-old boy. The man is married, had just lost his job, and has no previous convictions for crime. If he were to be imprisoned, his wife and three children would require public assistance, and the cost of prison maintenance would be borne by society. Finally, in the courtroom at the end of the hall, a heroin addict, guilty of the beating death of an 80-year-old woman during the commission of a burglary, must be sentenced by the judge.

How would you decide each of those

cases? What laws affect the sentencing process? What merit would you find in sentencing lawbreakers to prison vs. the other alternatives that exist? What are the alternatives to prison?

### Sentencing and the Law

Sentencing, as with all other criminal processes, is affected by a range of federal, state and local laws. Perhaps the most well known is the U.S. Constitution's Eighth Amendment restriction against "cruel and unusual punishment." This amendment has been interpreted by the courts not only to forbid barbarous treatment of offenders, but also to prevent "excessive" or inappropriate punishment. For example, sentencing an offender to ten years in prison for stealing a loaf of bread would probably violate the amendment.

In a recent Supreme Court case, *Solem v. Helm* (1983), a 5–4 majority of the Justices struck down the life imprisonment term of a man who had been convicted of passing a $100 bad check. In imposing the sentence, the trial court judge relied on a South Dakota repeat offender statute which allows a life sentence for anybody who had been convicted of three previous felonies. The majority of the Supreme Court, however, ruled "as a matter of principle, that a criminal sentence must be proportionate to the crime for which the defendant has been convicted."

In deciding whether a sentence is proportionate, objective factors should be used including seriousness of the crime, the harshness of the penalty, sentences imposed for the same crime, and sentences imposed in other jurisdictions. A convicted offender has a number of other rights which affect the sentencing process.

- *Right to Counsel:* The U.S. Supreme Court has ruled that a defendant is entitled to have an attorney present and participate in sentencing hearings.
- *Right of Allocution:* In most states, the defendant has a statutory right to make a statement in his or her behalf before sentence is passed.
- *No Unreasonable Delay:* Most jurisdictions provide that a sentence must be imposed "without unreasonable delay." Many provide an actual time limit such as 14 or 21 days after conviction.

### Fixed Time vs. Indeterminate Sentencing

Historically, prison sentences were for a fixed period of time. Based on the severity of the crime, a sentence of specific length would be imposed and the prisoner would know when his term would end. As increasing attention was given to the possibility for rehabilitation while in prison, more concern was paid to the characteristics and needs of individual convicts. The individual treatment notion, based on increased understanding of the human personality and psychological factors, suggested an appropriate term of imprisonment depended entirely on the individual in question. For some, one year might be sufficient to guarantee pro-social behavior; for others, 3, 5, 8, 10, 12, even 15 years might be needed before sufficient restructuring of the personality occurred.

Under these circumstances, indeterminate sentencing became the standard. With this system, prison sentences were spelled out in a range of years. For example, forgery might carry a penalty of 1–5 years in prison; burglary, 5–10 years; and manslaughter, 5–20. Once the judge decided that a prison term was in order, the appropriate sentence was handed down. How much time the prisoner actually served was left to parole boards and prison authorities.

Indeterminate sentencing has come under considerable attack in recent years. Prisoners and other critics claim that it produces arbitrary and unjust results. One car thief could spend two years in prison, another five, another seven, and so forth. Convincing the parole board that one had learned a lesson and was rehabilitated became an important inmate skill. As a consequence, enormous bitterness and enormous frustration were created. Recommendations for reform back to fixed-term sentences have been made. Since the mid-1970s, 11 states have adopted determinative or fixed-term sentencing standards. Under them, the judge or jury determines the *actual* period of time to be served at the time of sentencing, based on statutory ranges or sentencing formulas. So, today we might see a trend back to fixed-term sentencing.

### Art or Science?

As one prominent Florida criminal court judge once said, "Sentencing a criminal defendant is more of an art than a science." At sentencing, a judge must weigh a number of factors about the case and defendant, try to predict the effects of the various options available, and decide which one best suits the defendant *and* meets the needs of society. At the same time, the judge must be concerned with being fair, objective and impartial. Heavy caseloads and the never-ending stream of criminal defendants complicate the judge's job. Still, in theory at least, each defendant is entitled to individual and thorough consideration. (In some states, the jury recommends or passes sentence on the defendant for certain crimes, especially those where the death penalty is a possibility.)

To begin the sentencing process, the judge might first consider the applicable criminal codes which set out sentences to be applied for those convicted of crime. Misdemeanors are generally punished in increments of days or months (up to *one year*) in a county or municipal correctional facility or jail. Felonies are generally punished in increments of years in state prison.

In states following indeterminate sentencing, there is much variation about how much discretion a judge has in fixing a particular sentence. In some, the judge decides on both the maximum and minimum sentence within the statutory limits. At the other extreme, the statutory limits are controlling and the judge has no choice but to apply them.

In many jurisdictions a range of alternative sentences also is available for the sentencing judge to consider and choose from. These include suspended sentences; local jail or weekend sentences; community service and/or restitution sentencing; halfway houses where individuals convicted of crimes can engage in productive work in the community and still live in a supervised setting; and for the vast number of individuals convicted of first offenses, work under the supervision of a probation officer.

The judge also has at his or her disposal thorough information about the defendant. It is contained in a pre-sentencing report often prepared by the probation department which includes information about the defendant's family background, previous convictions, reputation, character and attitudes. This helps the judge understand the defendant and decide if rehabilitation efforts are in order. In addition, many jurisdictions require pre-sentence conferences with the offender and/or psychological examination before sentences are imposed.

### Factors in Sentencing

After reviewing the case record and the defendant's background, a judge can impose the maximum penalty under law (usually a long prison sentence) or give a shorter sentence depending on various factors. In general, the following are a few factors the judge might consider in a given case.

- *The Nature of the Crime:* Was the social harm of the crime great or relatively small?
- *The Nature of the Offender's Actions:* Were the offender's actions in committing the crime brutal, dangerous, or callous, or unintentional and restrained?
- *Level of Offender's Participation:* Did the offender plan and promote the crime or simply aid and follow?
- *Previous Criminal Record:* Has the offender committed previous crimes or is this a first offense? How serious were the previous crimes?
- *Psychological State:* Was the offender deliberate and calculating in committing the crime or was he or she provoked, under stress or ill?
- *Age:* Is the offender either very young and inexperienced or old and infirm?
- *Offender's Attitude:* Is the offender hostile and defiant or does he or she admit guilt and show remorse?
- *Public Attitude:* How will the public and law enforcement react to the sentence?
- *Other Factors might include:* the offender's reputation and position in the community, general character, and prior contributions to society.

After applying these factors to a given case and weighing them, the judge must be prepared to impose sentence. Imagine that two men were convicted of burglary. Max, 43, masterminded his job, had been convicted of burglaries twice before, used a gun, and terrorized an old couple. The other, John, never entered the house and only helped his older brother carry off a stereo. He is 18 years old and has never been in trouble with the law before. He is very sorry about what he did. Max will probably receive a long prison term for his crime. John will probably get a lesser term, maybe even probation or another alternative sentence. Many situations are not so clear cut. Still, it is the job of the judge to weigh and balance factors to determine an appropriate sentence.

### Mandatory Sentencing

Recently, discretionary sentencing by judges has come under public scrutiny. Critics claim that it leads to inconsistency in sentencing even for quite similar crimes, depending on the inclinations of a particular judge. Like all of us, judges have different attitudes, values and opinions that can lead to differences in applying and weighing the various factors and circumstances involved. Some of these criticisms may be the product of the public's fear about crime. Judges are sometimes accused of being "too soft" on criminals by giving out lenient sentences. Reacting to public opinion, many state legislatures have passed laws limiting or, in some cases, removing judicial discretion in sentencing.

For example, Minnesota recently enacted a "grid" formula for sentencing. The plan requires the judge to apply the formula which assigns certain values to certain factors and identifies the appropriate sentence almost automatically. If the judge wishes to modify the "formula" sentence, he or she must state the reasons in writing.

In addition, as of 1982, some 37 states had passed what are called mandatory sentencing laws for certain crimes. For example, laws have been passed which automatically require a prison term for people who use a gun in the commission of a crime. The judge must impose the mandatory sentence and cannot shorten or suspend it.

How are judges reacting to the limits placed on their discretion? Some support the idea. They seem to feel that it will lead to more consistent results and distract public wrath from the judiciary. Others are very critical. This group feels that a judge is in the best position to decide a sentence and that removing discretion will lead to injustices. Also, because mandatory provisions tend to promote prison terms, they feel many offenders who could benefit from alternative sentences (community service or rehabilitation programs) will get swallowed up in the cycle of crime. Will taking the art out of sentencing and replacing it with science lead to better results? Many are not sure that it will.

***For Discussion***

1. What is the difference between fixed and indeterminate sentencing? Which do you think is more just? Why?
2. Review the list of sentencing factors on page 125. Which do you think are the most important? Least important? *Explain.*
3. If you were a judge, are there any additional factors you would consider in making a sentence? If so, what would they be?
4. *Ask an Expert:* If possible, arrange an interview with a criminal court judge to find out about sentencing laws in your state. You might also interview a criminal court clerk and criminal attorney. Ask the following questions or make up some of your own.

- What are the purposes of punishment? Which are most likely to influence sentencing?
- Does your state use fixed or indeterminate sentencing?
- What sentencing standards are applied by sentencing judges? Where do they come from?
- What role, if any, does the jury play in sentencing?
- Are there any mandatory sentencing laws in effect? What are they?
- Do you think harsher jail or prison terms are likely to deter criminal behavior? If not, what will?
- Should judges have more discretion in sentencing? Less? Why or why not?

Compare your findings with those of your classmates.

A cramped prison cell in women's house of detention. [UPI]

## ▶ Will the Defendant Please Rise/An Activity

In the last chapter, you considered the criminal case of Thomas Wade Carter. In this activity, we will assume that he was convicted of the crime of involuntary manslaughter. It will be your job as judges to impose an appropriate sentence.

Assume that the State Criminal Code sets a minimum term of two years and a maximum term of five years for the crime of involuntary manslaughter. Further, assume that the judge has the discretion to set any term he or she sees fit, but must justify any term which is less than the state minimum in writing. The judge may not exceed the maximum term.

The following is a pre-sentence report submitted to the court by the Probation Department:

### Background Report of Thomas Wade Carter

*Age:* 18

*Social Background*

Thomas Wade Carter is the oldest of five children. As the oldest child, he was pressured to excell in sports and school as his father had done. Around age 12, Carter rebelled against his parents and school. He ran away from home two times. At school, he received failing grades and got into numerous fistfights. He was suspended from junior high once for fighting and from high school once for truancy. His teachers and friends report that Carter had a quick temper and would carry a grudge for a long time. At age 17, Carter was transferred to a continuation high school because of poor attendance and lack of credits at his regular high school. He attended the continuation school and earned enough credits to get a high school diploma. Carter worked for short periods of time as a fast food cook, gas station attendant, and car wash worker.

**Current Background**

Carter now lives in his mother's home with his sister and younger cousin. (His parents were divorced in 1981.) He contributes $200 per month out of his salary to household expenses. Carter is currently employed as an assistant parts department manager at a local auto dealer. His income is $11,000 per year. His immediate supervisor, Hans Spencer, reports that Carter has performed well in his current position and is effective in dealing with customers. Neighbors report that except for some "loud" parties and squealing tires, "Tom had seemed to have settled down" since high school. A number of his neighbors and friends have offered to vouch for his character.

Police informants indicate that Carter and Oscar Hanks have had a long-standing feud going back to high school. One month before Carter was arrested for the Joyce Ann Miller shooting, he and Oscar Hanks were arrested for disturbing the peace at a local bar. According to some witnesses, Hanks knifed Carter in the leg during the fight at the bar. However, Carter refused to cooperate with the District Attorney in the prosecution of Hanks for assault with a deadly weapon.

**Prior Record:**

| *Age* | *Arrest Record* | *Action by Juvenile Authorities* |
|---|---|---|
| 10 | Runaway | Counseled and released to parents by police |
| 12 | Runaway | Counseled and released to parents by police |
| 13 | Curfew violation | Counseled and released to parents by police |
| 17 | Reckless driving | Formal probation (6 months) |

| *Age* | *Arrest Record* | *Action by Adult Authorities* |
|---|---|---|
| 18 | Disturbing the peace (barfighting) | Conviction; $50 fine |

## ▶ Determining the Sentence/ Role Play

In this sentencing activity, each student in the class will assume the role of the judge in the Thomas Wade Carter case.

1. Form small groups of three to five students all acting as judges.
2. As a group, review each of the sentencing factors on page 125 and answer the accompanying questions using information from the Carter case and that contained in the *Pre-Sentence Report*. Then discuss the following questions:
   - Which circumstances in Carter's situation point to a harsh sentence? (Make a list.)
   - Which circumstances in Carter's situation point to leniency and the probability of his reform? (Make a list.)
3. As a group, discuss and choose one of the following sentencing options. Prepare a brief written statement justifying your choice.

a. *An Alternative Sentence*

Tom Carter will serve only one year in a county or municipal prison. For the following two years, he will be closely supervised by a probation officer and have to meet certain conditions including no use of alcoholic beverages or drugs, a 10 pm curfew, maintenance of a steady job, and 20 hours of community service per month.

b. *Statutory Prison Term*

Tom Carter will be sentenced to a prison term within the statutory minimum and maximum range (specify number of years).

4. A representative from each group should report the sentence imposed by his or her group to the rest of the class. The sentence reported by each group should be recorded on the chalkboard.
5. After discussing the sentences submitted by the judge role-groups, students might want to end the activity by taking a class vote on the choices recorded on the chalkboard.
6. As a follow-up activity, write or interview a judge asking him or her to suggest what kind of sentence might be given in his or her court.

## ■ The Promise of Probation

There are many alternatives to imprisonment. However, in recent years there has been a growing public impatience with America's crime problem, leading to an increased demand for strict punishment, tough sentencing, and long prison terms. Ironically, as public attitudes have hardened, many corrections specialists maintain that community-based correctional alternatives are more effective than prison sentences. In these, convicted criminals can learn to function effectively in society. Some of the alternatives available include: probation under supervision; diversion out of the system for minor offenses; community service programs which provide an opportunity for the offender to make a positive contribution to the society; or restitution, where through gainful employment convicted criminals compensate the victims of their crimes. Let's begin with probation.

### What is Probation?

Probation is a sentence in which the offender is released by the court, providing that he or she meets certain ongoing conditions imposed by the court. The court retains the authority to cancel probation and resentence the offender if he or she violates the conditions.

Probation began in the mid-1800s as a humanitarian measure intended to keep petty offenders away from the corrupting influences of jails and prisons. By 1925, probation for juveniles was available in every state, yet it was 1956 before adult probation reached the same level.

Effective supervision of released offenders is the heart of probation. This is the job of the probation officer to whom the offender must report on a regular basis. Originally, the function was often handled by a judge or a citizen volunteer. During and after World War I, the supervision of probation became a career in itself. Individuals interested in becoming probation officers were often educated as social workers with expertise in theories of criminology and corrections.

The field of psychiatry also has influenced probation practices. Ideally, it has been thought that offenders should be treated as individuals with special emotional problems. The probation officer is supposed to help them solve these problems. Recent probation theory and training emphasizes the need to establish significant links between the offender and his or her community. Family, school, business and church connections help an offender to feel like he or she is part of the community and makes return to criminal behavior less likely.

### Probation Conditions

In many jurisdictions, the pre-sentencing report of the probation officer includes recommendations for the terms of probation. The judge, the probation officer, the defendant, his or her counsel, and the prosecution all have an opportunity to comment and react to what is being proposed. Two conditions are often imposed. First, a judge will often require an offender to spend a period of time in jail before his or her probation begins. This is believed to impress the offender with the seriousness of the situation and increases the chance that probation conditions will be met.

A second major requirement of the court can be to insist on victim restitution. It becomes the responsibility of the probationer to repay the victim or community for the damage done. This can be the first step in developing a positive relationship between the criminal and society.

### Who Should Be Placed on Probation?

There is general agreement about the criteria that should be used in deciding whether an offender should be placed on probation. The following is a list of factors that might be used by a judge to help identify likely candidates for probation:

a. the defendant's criminal conduct neither caused nor threatened serious harm;
b. the defendant did not consider that the criminal conduct would cause or threaten serious harm;
c. the defendant acted under a strong provocation;
d. there were substantial grounds tending to excuse or justify the defendant's criminal conduct;
e. the victim of the defendant contributed to the commission of the crime;
f. the defendant has compensated or will compensate the victim for his or her injury or damage;
g. the defendant has no history of prior deliquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present crime;
h. the defendant's criminal conduct was the result of circumstances unlikely to happen again;
i. the character and attitudes of the defendant show that he or she is unlikely to commit another crime;
j. the defendant is likely to benefit from probationary treatment;
k. the imprisonment of the defendant would cause excessive hardship to the defendant or his or her dependents.*

### *For Discussion*

1. What are some advantages in granting probation to an offender? What are some possible disadvantages?

2. Review the above list of factors in granting probation. Using these factors, decide which, if any, of the following offenders should be placed on probation. Explain your answers.

   a. Mark Lewis, while setting off fireworks in a wilderness area, started a fire which burned down a Forest Service utility shed and destroyed a bulldozer. He has no prior criminal record.

   b. Barbara Keane was convicted for larceny by pickpocketing. She has one prior conviction for prostitution. She has paid back the money and has become actively involved in church charitable work.

   c. Deanna Doepel was convicted of attempted murder of a co-worker. Though she has no prior criminal record, she has been fired from three jobs for assaulting employees. She is currently undergoing therapy while in jail awaiting sentencing.

   d. Max Perkins was convicted of embezzling $20,000 from his employer. Twenty years ago, he served one year in prison for forgery. Since that time, he has raised a family and has been active in community service work.

3. *Ask a Probation Officer:* Interview a probation officer in your community. To find one, consult the governmental listings in your phone book or contact your local court. Find out about your jurisdiction's probation procedures and administration. For example, you might ask:

   - How are probation services organized in your jurisdiction?
   - What is the average caseload of a probation officer?
   - What percentage of offenders successfully complete their probation? How does this compare to other jurisdictions?
   - What is a typical day of a probation officer like?
   - What conditions are most important for successful probation?

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*Adapted from: ALI Model Penal Code, Paragraph 7.01 [2]

## When Should Probation Be Revoked?/An Activity

Essential to the effectiveness of probation is careful supervision by the probation officer and adherence to conditions by the offender (probationer). As an agent of the court, the probation officer monitors the probationer by requiring regular reporting and/or surprise spot checks of the probationer's condition, activities and whereabouts.

If a probation officer learns that one of his/her probationers has violated the terms of probation, the probation officer has two choices. The officer may simply call in the probationer and give a warning or, if the violation is serious enough, the officer may ask that the probationer be ordered back to court for a probation revocation hearing.

At a probation revocation hearing, the judge must decide whether to continue or revoke (cancel) the probation. If probation is revoked, the probationer is usually fined or imprisoned. Occasionally, a judge will continue probation, but with additional and stricter conditions.

In this activity, you will role play a hearing in which these issues are raised.

**Conditions of Probation**

When a person is convicted and placed on probation, the judge usually sets certain "conditions of probation." The conditions of probation require the probationer to act or limit his/her behavior in certain ways. Below you will find a list of the conditions of probation which might be used by criminal court judges:

1. Spend a suitable time in County Jail.
2. Pay a fine, plus penalty assessment, to the probation officer in such manner as he or she shall describe.
3. Minimum payment of fine or restitution to be $________.
4. Make restitution through the Probation Officer in such amount and manner as such officer shall prescribe.
5. Not drink any alcoholic beverages and stay out of places where they are the chief item of sale.
6. Not use nor possess any narcotics, dangerous or restricted drugs or associated paraphernalia, except with valid prescription, and stay away from places where drug users congregate.
7. Not associate with persons known by the defendant to be narcotics or drug users or sellers.
8. Submit to periodic anti-narcotic testing as directed by the Probation Officer.
9. Have no blank checks in possession, not write any portion of any check, not have bank account upon which he or she may draw checks.
10. Not gamble nor engage in bookmaking activities nor have paraphernalia thereof in possession, and not be present in places where gambling or bookmaking is conducted.
11. Not associate with (name of specific person(s)) ____________________.
12. Cooperate with the Probation Officer in a plan for ____________________
13. Support dependents as directed by Probation Officer.
14. Seek and maintain training, schooling, or employment as approved by the Probation Officer.
15. Maintain residence as approved by Probation Officer. If applicable add: Defendant may reside in ____________________ under the terms of ____________________
16. Surrender driver's license to clerk of court to be returned to Department of Motor Vehicles.
17. Not drive a motor vehicle unless lawfully licensed and insured.
18. Not own, use or possess any dangerous or deadly weapon.
19. Submit his/her person and property to search and seizure at any time of day or night by any law enforcement officer with or without a warrant.

*NOTE: This condition is recommended only with the approval of the Director of Probation.*

20. Obey all laws, orders, rules and regulations of the Probation Department and of the Court.

## Probation Revocation Hearing/A Role Play

Members of the class will role play a probation revocation hearing. After the role-play, the class will have an opportunity to decide whether probation should or should not be cancelled in the case presented.

1. Prearrangements: Invite a probation officer, criminal lawyer, or judge to help you conduct and debrief this activity. Ask them to compare the procedures in this activity with those followed in your jurisdiction.
2. Divide the class into groups of four. Group members should choose the following roles: judge, probationer (Lee Miller), probation officer, public defender.
3. Read and study:
   a. *Role Descriptions* (for your role)
   b. *Probation Report* (including relevant conditions).
4. When you are ready, conduct the Probation Revocation Hearing with members of your group using the procedures described below. When you are finished with the simulation, discuss the activity with other members of the class.
5. Procedure for Probation Revocation Hearing:
   a. The Judge opens the hearing and asks if all parties are present and ready.
   b. The Judge asks the Public Defender to present his/her case.
   c. The Public Defender may cross-examine the Probation Officer.
   d. The Public Defender may call Probationer Miller to testify. If this happens, the Judge may also ask questions.
   e. The Judge may ask the Probation Officer questions at any time.
   f. The Public Defender should close by summarizing his/her arguments against revoking Lee Miller's probation.
   g. The Judge should ask the Probation Officer to summarize his/her arguments in favor of revoking Lee Miller's probation.
   h. The Judge decides whether or not to revoke Lee Miller's probation (see alternatives listed in Judge's role description).
   i. Each Judge should announce his/her decision before the entire class. The Judges should also explain the reason(s) for their rulings.

**Role Descriptions**

*Probationer: Lee Miller*

You feel that circumstances forced you to violate the conditions of your probation. Consequently, you feel your probation should not be revoked. You have a Public Defender to represent you. Discuss with him/her the strategy you should follow at your Probation Revocation Hearing. Decide with your Public Defender whether or not you should take the witness stand and testify on your own behalf and subject yourself to cross examination. You have the right to remain silent if you wish.

*Public Defender*

You will represent Lee Miller at the Probation Revocation Hearing. Discuss with your client the strategy he should follow in attempting to convince the Judge not to revoke probation. Decide whether or not to call the Probation Officer to the witness stand in order to cross examine him/her with regard to his/her recommendation to revoke your client's probation. Also, decide whether or not your client should take the witness stand to testify. Your client has the right to remain silent, however, if your client does testify, the Judge may also ask questions.

*Probation Officer*

You are Lee Miller's Probation Officer. You have written the probation report which will be the focus of this Probation Revocation Hearing. If you are called to testify, you should defend your recommendation that Miller's probation be revoked and that the 1-year suspended jail sentence be imposed.

*Judge*

You were the trial judge at Lee Miller's trial. After his being convicted, you sentenced Lee Miller to a one-year county jail term. Then you suspended this sentence and placed Miller on probation. Today you must decide what to do in view of Miller's probation violations. Your alternatives are as follows:

1. continue probation under the existing conditions;
2. continue probation with additional conditions that you will identify;
3. revoke probation, and impose the 1-year sentence.

**Documents: Probation Report**

Name of Probationer: Lee Miller
Age: 38

Marital Status: Divorced
Occupation: Assembly line worker
Employer: United Radio Co.

**Current Conviction**

1. Probationer Lee Miller was convicted two months ago of manslaughter. Probationer Miller, while driving an automobile under the influence of alcohol, struck and injured a five-year-old girl.
2. Sentence:
   a. One year in county jail (suspended)
   b. $1,000 fine
   c. placed on two-year formal probation
   d. conditions of probation: 2, 5, 12, 13, 14, 15, 16, 20; special condition: Probationer is not to drive any motor vehicle during the period of probation.

**Probation Violation Report**

1. Two weeks ago at 7:55 a.m., Probationer Miller was stopped for speeding by a Highway Patrol Officer. The officer administered several field tests for drunk driving, and concluded that Probationer Miller may have been driving under the influence of alcohol. Probationer Miller was arrested and taken to a local Highway Patrol Station where a chemical test for alcohol consumption was administered. The result of this test showed that while Probationer Miller had been drinking alcohol recently, the level of this substance was below that required to indicate "driving under the influence." Probationer Miller was cited for speeding and driving without a license, then released.
2. Probation Violations:
   No. 5—Probationer Miller drank an alcoholic beverage.
   No. 20—Probationer Miller drove an automobile without a license, and violated the speed law.
   Special Condition—Probationer Miller drove a motor vehicle during the period of probation.

**Statement of Probationer**

I admit that I drove an automobile and was speeding in violation of my probation. However, I reported these violations myself to my probation officer within 24 hours of the incident.

It is also true that I had been drinking, but only in my own apartment. A friend had come over to spend the evening, and brought some beer with him.

I overslept the next morning, and had to get to work in half an hour. I have been taking the bus to work, but this takes an hour. I decided to ask a neighbor if I could borrow his car so that I could get to work on time. He said it was O.K. to take his car.

I had already been late to work two times since getting my job a month ago. I was afraid that if I lost my job I would not be able to make support payments for my ex-wife and children and pay off my fine to the court. Both are conditions of my probation.

As it turned out, I was half a day late for work, but my boss listened to my story and decided to give me one more chance. I believe that I have learned my lesson from this, and promise to strictly follow my conditions of probation in the future.

**Recommendations of Probation Officer**

Probationer Miller seems to mean well, but also appears weak-willed. I recommend that the probation be revoked, and the suspended 1-year county jail sentence be imposed.

**Discussion Questions**

1. What did the Judge decide in this case? Why?
2. Were some of the Judges more lenient than others? If so, how do you account for these differences in attitude?
3. Assume that there was a great deal of publicity surrounding Lee Miller's original manslaughter trial and that many people in the community were angry because Miller was placed on probation rather than being sent to jail. Do you think the Judges' decisions would have been affected by community feelings of this sort? Why or why not?
4. How is the Probation Revocation Hearing different from a trial? How is it similar? What constitutional rights does the probationer have at this hearing? Why do you think this is the case?
5. In your opinion, is the Probation Revocation Hearing a fair way to decide whether a probationer should lose his/her probation status? Why or why not?

## ■ Service to the Community

Chris Lester, age 18, was convicted of destruction of public property when he vandalized a school. Because this was his first offense, the judge did not think that a jail sentence was necessary. Instead, the judge fined him several thousand dollars and required him to clean graffiti off the walls of public buildings.

Another judge was uncertain about how to sentence a husband and wife who had been convicted of criminal child neglect. Because of their religious beliefs, the couple had refused to allow their son to receive medical care. As a result, the boy nearly died. The judge sentenced the couple to do volunteer work at a nearby state hospital.

These cases illustrate a type of restitution called *community service sentencing*. It allows certain criminal offenders to stay out of jail if they agree to do volunteer work which is useful to their community. In some cases, the restitution is directly related to the kind of crime committed by the convicted offender. For example, someone found guilty of drunk driving might have to do clean-up work at a facility for alcoholics.

The community service approach to sentencing is generally limited to people who have committed non-violent crimes such as traffic offenses, public drunkenness, drug abuse, and white collar offenses. For example, in the mid-1970s a system was developed in Los Angeles County for referring offenders convicted of misdemeanors to community service agencies. The system, the *Court Referral Community Service Program*, involves the cooperation of three groups:

1. *Municipal court judges* who agree to refer certain offenders convicted of misdemeanors to community agencies in need of volunteers.
2. *Community agencies* that need volunteer help. These agencies include hospitals, the YMCA/YWCA, the Red Cross, suicide and rape crisis centers, teenage hot lines, alcohol and other drug abuse clinics, and many other community-based agencies that depend heavily on volunteers to do all kinds of skilled and unskilled work.
3. *Volunteer Action Centers* or "VACS." Los Angeles County has volunteer center offices located throughout the county. They are in continual contact with the community agencies in order to maintain lists of volunteer job opportunities. Anyone who is interested in volunteer work may go to a VAC and find out what volunteer jobs are available in his or her community. Since they began working with the county's court referral program, the VACs have also placed a number of criminal offenders into a wide variety of community agencies.

### The Case of Cory Baker

Cory Baker, age 40, struck and injured a child with his car while speeding in a school zone. Just before this incident, Cory had lost his job as a carpenter on a construction project. In municipal court, Cory was convicted of speeding and reckless driving.

Instead of sentencing Cory to jail, or requiring him to pay a large fine, the judge instructed Cory to work 40 hours for some community service agency. Cory was referred by the Court to a nearby Volunteer Action Center (VAC) for placement with a community agency.

Within a week, Cory had made an appointment for an interview at a local VAC office. Cory was asked about his skills, education, interests, and willingness to do volunteer type work. Cory said that he was glad to become a "court referral volunteer" rather than pay a fine which he could not afford, or worse yet, go to jail.

The VAC interviewer then showed Cory a list of volunteer jobs near his home. Cory noted that several agencies needed a variety of skilled workers including carpenters. He chose the George Henry Home for Boys, a private group home for delinquent boys.

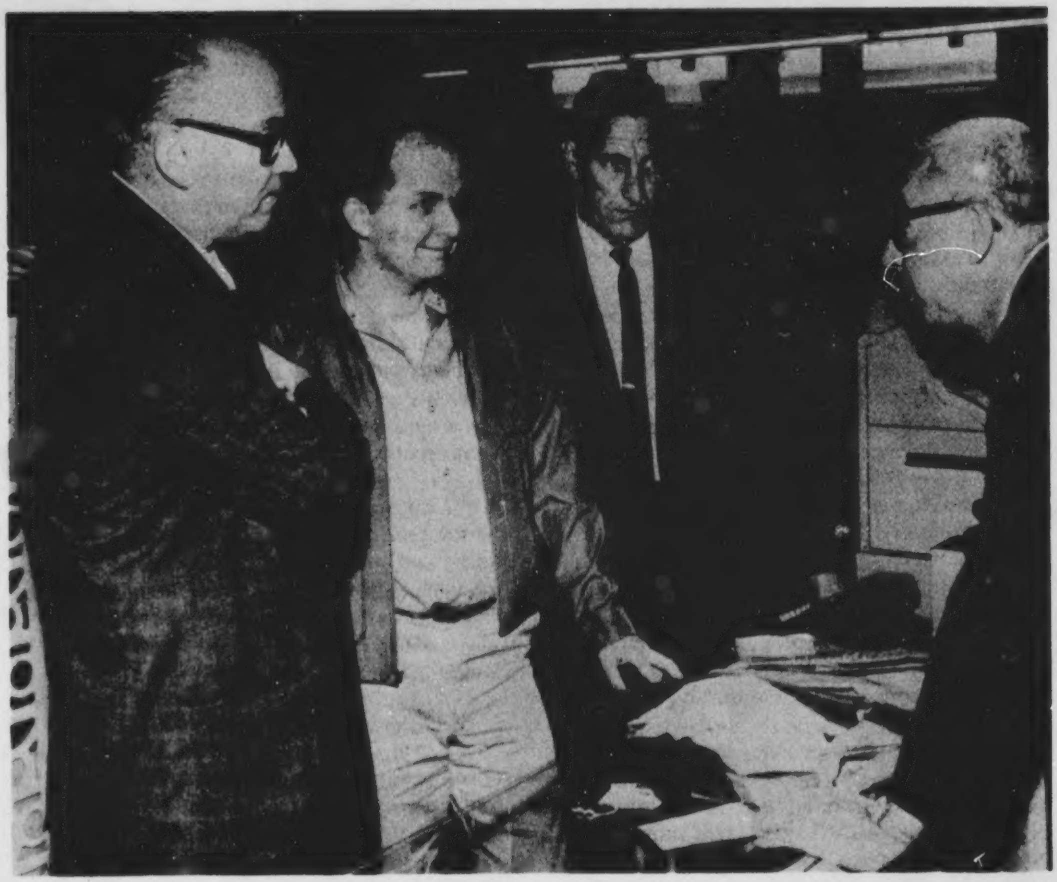
Next, Cory went to the George Henry Home for a second interview. The director of the home was satisfied with Cory, and promptly put him to work.

Cory worked at the George Henry Home for about 5 hours a week for two months. During this time, he got to know many of the boys. He began to show some of them how to do basic carpentry. The director and staff at the home were impressed with Cory's work. After he had put in the 40 hours of "volunteer" work that had been required by the court, Cory was asked to continue at the home as a paid worker. Cory accepted and was hired to set up a carpentry shop for the boys at the home.

### Does It Work?

Not all court referral volunteers are as fortunate as Cory Baker. Nevertheless, most do have a positive experience. As one Los Angeles Municipal Court Judge noted:

> *The whole community service [idea] can work wonders. That's the beauty of it. Oftentimes personal stress is the reason the people are here in the first place. If the man gets involved in helping others, he is*



A convict is prepared for an early release "work furlough" program. [UPI]

*helping himself as well.*

Some critics of this form of sentencing say that it is "too soft." They call for stronger punishments such as prison terms. In response to the criticism, Federal Judge Renfrew of San Francisco said, "We have to examine the overall public interest. 'Warehousing' criminals in prison has not been successful. It just spawns more criminals."

### *Discussion Questions*

1. Do you approve or disapprove of community service sentencing such as the court referral program in L.A. County? Why or why not?
2. Should community service sentencing be available to convicted adult felons? To juvenile criminal offenders? Why or why not?
3. What might be some problems in expanding community service sentencing to juveniles and adults convicted of violent crimes?

## Corrections and the Community

- John—lonely, bored and 19—got talked into something he didn't want to do. At a friend's urging, he helped steal a late-model Mercedes-Benz from a shopping mall parking lot. They didn't get far. They are now awaiting sentence for grand theft auto.
- Mary never wants to go through this experience again. She has just served 2 1/2 years of a three-year sentence in a federal prison for forgery and passing bad checks. Although she wants to get out more than anything else in the world, she is a little scared. What if she can't make it on the outside? What if she makes another mistake? She shudders whenever she thinks about it.

What do both of these offenders have in common? Both might benefit from "community correction programs."

### What is a Community Correctional Program?

Halfway houses, community treatment centers, residential care facilities, group homes and foster homes are all community correctional programs. Since most of our criminal justice system is already locally-based—police, courts, prosecutors and defenders—why not make corrections a community responsibility? Those who favor community corrections argue just this point.

Proponents who favor community corrections want to involve the community more directly in dealing with problems of crime and delinquency. They want to cut the use of prisons and expand community correctional programs. Presently, corrections is primarily a state and federal responsibility. Some correctional programs are at the county level, but these are mostly local jails used to hold people who are awaiting trial and to house those convicted of misdemeanors and minor crimes.

The American movement in favor of community corrections is now more than a decade old. Some states have done little more than expand probation. (Probation is a sentencing alternative to prison which requires a person convicted of a crime to follow certain rules or conditions such as curfew.) Other states are trying to divert a large percentage of state and county prisoners into correctional programs located closer to their home communities.

Some community correctional programs operate businesses, providing both financial security and work experience for the residents. As residents begin to demonstrate more responsibility, they are granted more and more privileges, independence and freedom. Gradually, offenders assume complete responsibility for their everyday activities and, in theory, are ready to re-enter the community.

### Pre-Release Programs

Currently, few adult criminal offenders serve their sentences in community correctional facilities such as halfway houses. Instead, they serve their sentences in state or federal prisons and county or local jails.

The Federal Bureau of Prisons and most state correctional systems, however, do offer pre-release programs for prisoners. Prisoners like Mary (from our example above) can be placed in pre-release programs and are transferred from prison to halfway houses in their communities just prior to the completion of their sentences. Most prisoners stay in halfway houses for only a short period of time, usually three months. After that, they enter the community and try to resume a normal life. Pre-release programs are also called re-entry programs because they gradually phase recent prisoners into the community again.

### Alternatives to Prison

Few states offer extensive alternatives to prison. Minnesota is one exception. In 1974, Minnesota passed the Community Corrections Act in an attempt to divert all but the most serious offenders into their home communities.

Now, an extensive community-based correctional system has been established in that state. Instead of transferring offenders from prison to halfway houses, as pre-release programs do, Minnesota aims to place many of its offenders in community correctional programs *immediately* after sentencing. Those offenders *never* see the inside of a prison. However, they are committed to a halfway house or a community residence for criminal offenders. John, the 19-year-old auto thief, might be eligible for such a program.

### Goals of Community-based Corrections

The overriding goal of any community corrections program is to help ex-offenders lead law-abiding lifestyles while at the same time phasing them into their own communities. This process is under the supervision of professional counselors, persons who are trained to help people with their problems.

Many offenders have been separated from their families and consequently need family, child and marriage counseling. Others might need legal counseling. Ex-alcohol and drug abusers often have moments of temptation and require counseling during those periods. Offenders who want to go back to school discuss their plans with educational counselors. Some are choosing a vocation and require vocational counseling. Others simply need someone with whom they can discuss their problems.

Group support is emphasized. Interaction with other people, which, of course, includes residents in the community, is fostered by volunteer programs and job placement.

The atmosphere of halfway houses resembles that of other neighborhood homes and apartment buildings. They blend in, rather than stand out. Residents have their own bedrooms. Some have roommates. Cooking and cleaning responsibilities are shared, particularly in group homes where the support system is similar to that of the family unit. Of course, there is no mother and father. But a closeness does exist between residents—one that offers emotional support, companionship and shared responsibility.

### Obstacles to Success

There are, however, obstacles facing community-based correctional programs. These obstacles—many deep-rooted in the community itself—keep state, county and federal correctional administrators from transferring all eligible prisoners into community programs. They include:

- Funding
- Habitual and violent criminals
- Community attitudes.

### *Funding*

The operation of the nation's prison system is a multi-billion dollar business. If a large percentage of the nation's prisoners were diverted to community correctional programs, a tremendous restructuring and rechanneling of funds and personnel would follow. This kind of diversion would require a fundamental and wrenching reform of a correctional system that is over one hundred years old. Whenever such a drastic change is suggested, strong resistance often follows.

### *Habitual and Violent Criminals*

Certain types of criminals pose further problems. The habitual lawbreaker, for example, whose community has always been that of a criminal culture, commonly rejects opportunities to explore and develop new community contacts.

In addition, there is a constant fear that offenders with records of violent behavior will have relapses. They might harm innocent community members while staying in the halfway house. Some programs simply refuse to admit criminals with histories of violence.

### *Community Attitudes*

When an old home or apartment building is converted into a halfway house, nearby residents often fear a wave of crime will sweep their neighborhood. Residents predict that homes will be burglarized, women raped, automobiles stolen, and eventually, property values affected—all because "criminals" live in the neighbor hood and come and go as they please. The fear factor drastically multiplies if a halfway house resident does in fact commit a crime in the neighborhood. Others view such alternatives as being "soft" on criminals. These are serious problems. To work, community-based corrections, more than anything else, need the support of the community.

### *For Discussion*

1. What are some of the advantages of community-based correction programs? What are some disadvantages?
2. Would you be in favor of the establishment of a halfway house in your neighborhood? Would you support it? Would your neighbors? Why or why not?
3. *Ask an Ex-Offender*

Many communities have ex-convict self-help groups. If there is such a group in your community, ask if speakers are available. If so, ask if it would be possible to invite an ex-offender to your class. Questions to ask the visitor might include:

- What are conditions like in prison? What was the hardest part of prison life?
- Did your experiences help you adjust to life after you were released? If so, how? If not, why not?
- What was the hardest aspect about your adjustment to freedom once you were released from prison?
- Do you know about pre-release or halfway house programs? Did you participate in one? If so, what were your experiences?
- Do you think that a community corrections program is helpful to the offender or community?
- How do you feel society should deal with the criminal offender?

## Prisons Today

According to Judge William G. Nagel, Executive Vice President of the Institute of Corrections, if all Americans in prisons and jails were housed together in the same city, it would be one of the largest in the United States, just behind St. Louis and just ahead of Denver in size. He pointed out that "America, the world leader in telephones, automobiles, air conditioners, central heat and bath tubs, has almost become the world leader in prisoners per 100,000 of its people. Only the U.S.S.R. and South Africa surpass us."

The judge cites recent studies which show that the most important single contributor to the prison population is not the crime rate but the availability of cells. "Judges, given no options, send people to prison. Judges with viable options, such as probation and parole services, more often do not." But, does sending large numbers of people to prison reduce the crime rate? Judge Nagel, at least, is not too sure. He cited the following example:

"Texas and Pennsylvania both have about 12 million people . . . and a crime rate within the nation's middle one-third. Yet, in 1979, Pennsylvania had less than 8,000 state prisoners, while Texas had 25,400. The comparative current murder rates were 5.5 per 100,000 people in Pennsylvania, and 13.3 for Texas. A citizen [was] 15% more likely to be mugged in the Lone Star State than the Quaker State, and a woman twice as likely to be raped."

Whether the average American believes that imprisonment does more than take the dangerous criminal off the street is not entirely clear. However, we can take a look at life in prison and try to answer the question "What are prisons for and what do they really accomplish?"

### America's Prison Profile

Today in the United States, there are roughly 800 prisons which hold, according to 1982 U.S. Justice Department statistics, approximately 369,000 inmates. Prisons may be well-designed and progressive institutions. However, in some prisons extortion, knives, filth, murder, homosexual rape and racial conflict are all too common. In such prisons, the terms given to the car thief as well as the child molester are lived out in a form of virtual hell. Activities for prisoners range from well-planned opportunities for education and vocational training to simply passing the time in a cell. Prisoners who work in some prisons receive pay; in others, they receive nothing. In some prisons, inmates have the freedom to choose their own wardrobe, decorate their cells and possess personal belongings. In others, spartan cells, drab uniforms and military-style haircuts are the rule. In short, prisons and prisoners experiences are different.

There are some common problems, however—overcrowding is one of the biggest that many prisons face. Some recent examples: California State Prison at San Quentin was designed to hold 2,642 inmates; there are currently 3,427. Huntsville Unit in Huntsville, Texas, was designed for 1,870 inmates and has a current population of 2,171. Nationwide, the state and federal prisons are operating at about 100,000 inmates above capacity and some 85% of prisons are overcrowded. Overcrowding can lead to discipline problems, convict unrest, deteriorating and unsanitary conditions and, too often, violence.

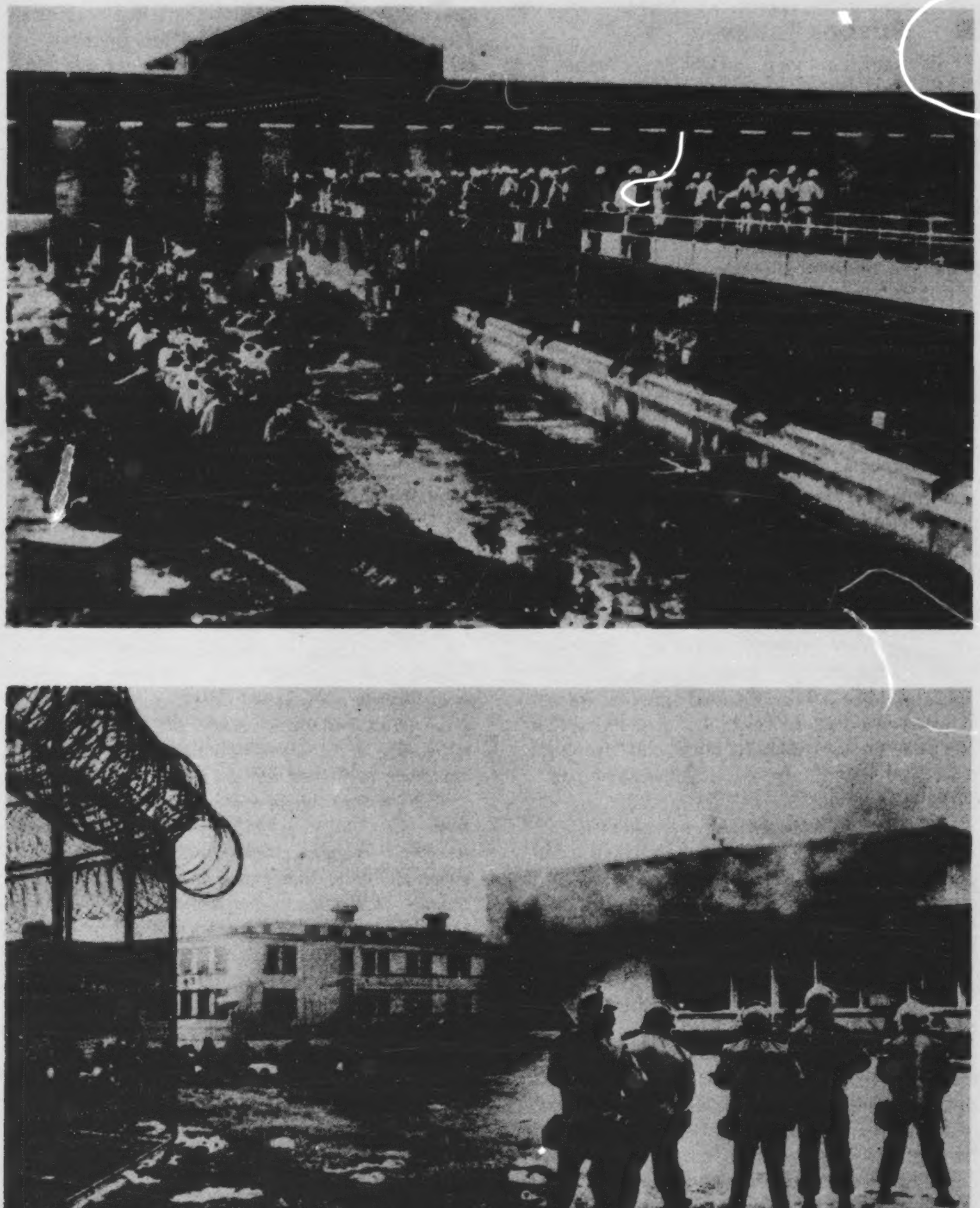
### Poor Prison Conditions

The following prison conditions were described in a 1978 Supreme Court decision:

> *The routine conditions that the ordinary Arkansas convict had to endure were characterized by the District Court as "a dark and evil world completely alien to the free world." That characterization was amply supported by the evidence . . .*
>
> *Confinement in punitive isolation was for an indeterminate period of time. An average of four, and sometimes as many as 10 or 11 prisoners were crowded into windowless 8'x10' cells containing no furniture other than a source of water and a toilet that could only be flushed from outside the cell . . .*
>
> *At night the prisoners were given mattresses to spread on the floor. Although some prisoners suffered from infectious diseases such as hepatitis and venereal disease, mattresses were removed and jumbled together each morning, then returned to the cells at random in the evening. Prisoners in isolation received fewer than 1,000 calories a day; their meals consisted primarily of 4-inch squares of "grue," a substance created by mashing meat, potatoes, oleo, syrup, vegetables, eggs and seasoning into a paste and baking the mixture in a pan.*
>
> —*Hutto v. Finney,* 98 S. Ct., 2565 (1978)

In the mid-1970s, the federal judiciary began taking notice of the conditions that existed in some prisons. Cases charged that inmates serving time in unsanitary, dangerous or seriously overcrowded prisons were being subjected to "cruel and unusual punishment" as forbidden by the Eighth Amendment of the U.S. Constitution.

In several cases, the Court agreed. It held that the Eighth Amendment prohibits penalties that "transgress today's broad and idealistic con-



(Top) Attica, 1971, (Bottom) New Mexico, 1980.
The fear of riots still grip our nation's prisons. [UPI]

cepts of dignity, civilized standards, humanity and decency." (*Estelle v. Gamble*, 97 S. Ct. 285 (1976).

Encouraged by the Court, federal courts around the country began ordering prison reforms, sometimes imposing rigid deadlines to end overcrowding. In Alabama, for instance, some 200 prisoners were released well before the end of their sentence to satisfy a federal court order. However, those hoping for a new era in court imposed prison reform were soon disappointed.

In 1981, the U.S. Supreme Court decided the case of *Rhodes v. Chapman* (101 S. Ct. 239), which raised the issue of whether the Eighth Amendment allowed two prisoners to be confined in a cell designed for one. The Court ruled that they could. Voting 8–1, the Justices held that overcrowding does not *per se* violate the Eighth Amendment if overall prison conditions meet contemporary standards of decency. Justice O'Conner wrote for the majority stating that "harsh conditions" are the price of crime and the Constitution does not require comfortable prisons. The Court seemed to be saying that it had gone about as far as it would go in ordering reform.

To overcome the problem of overcrowding, there is a building program going on in many states. But the costs can be staggering. New prison costs have recently ranged from $37,000 per cell for a medium security complex in Nevada, to $78,300 for a maximum security complex cell in Minnesota. It costs about $55,000 per bed to create a maximum security facility. Annually, taxpayers must pay on the average $15,000 to feed and guard each inmate for a year. Some prison authorities are said to be secretly pleased by court decisions, since they have forced state legislatures to appropriate long-needed funds for the construction of new facilities, or to bring better living conditions to existing prisons.

### The Prison Population Mix

Many experts believe that even if billions of dollars were expended on construction, new prisons could not keep up with the rising tide. This has inspired some to suggest that prisons, especially maximum security types, should be reserved for only the most serious offender. Some states are already reserving space in maximum security institutions for the violent criminal. In New York and Illinois, more than 70% of the inmates now are doing time for homicide, kidnapping, rape, arson, robbery, assault or weapons possession. In most states, however, over half of the prisoners are serving time for nonviolent crimes.

### *For Discussion*

1. Why do you think that the U.S. has the third largest prison population per 100,000 citizens in the world?
2. Do you agree with the U.S. Supreme Court decision in *Rhodes v. Chapman*? Why or why not?
3. *Research Activity*

Visit your local library or contact your state corrections system and research the following. Report your findings back to the class.

- What is the prison population in your state?
- How many state prisons are there? Of what types?
- How much money does the state spend each year for the maintenance of prisons?

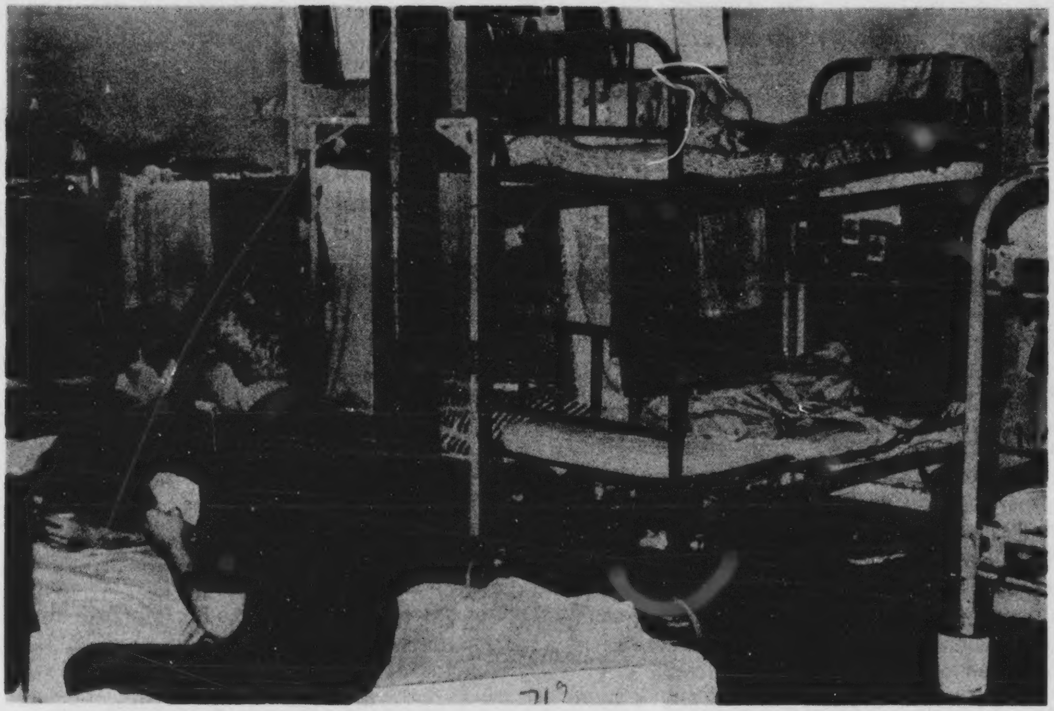
### Life on the Inside

In February, 1980, 33 inmates were killed at New Mexico State Penitentiary. Convicts went wild; some of their victims were murdered with blow torches; others were knifed. Resulting trials charged 27 inmates with homicide, but that did not end the violence. Within 20 months of the riot, some 75 guards and inmates were stabbed with makeshift knives or beaten. One guard was ceremoniously tortured to death during an escape attempt. Fear that guards and inmates would be witnesses in further trials spurred reprisals and further violence on the part of inmates. Many prisoners complained that overcrowding, inconsistent enforcement of prison rules, harassment by guards, and inadequate facilities made the prison intolerable. Reforms and additional funding have been provided, but it will be a long time before the bitterness of the New Mexico prison riot and its aftermath are forgotten.

The New Mexico Penitentiary situation stirred memories of another famous prison riot which broke out nearly ten years before at the Attica Correctional Facility in New York State. In that riot, 43 people were killed and the riot only ended after what has been called the "bloodiest one-day encounter between Americans since the Civil War." The conditions and regimen that existed at Attica serve as an example of life inside a maximum security prison even today.

### Prison Life

A prisoner, who is called an inmate, enters Attica in shackles and leg-irons. He is issued gray prison clothes, fingerprinted, given a number and a haircut. He is then placed in an isolation cell where he stays for two days, 24 hours per day. After completing appropriate intake interviews and tests, the inmate spends from four to eight weeks in this cell, until he is assigned a job and



An example of prison overcrowding which led to court ordered corrective measures. [UPI]

transferred to a regular cell block. During this period, he is in his cell between 18 and 20 hours per day.

Prisoners at Attica have individual cells which are approximately 6'x9' with 7-foot-high ceilings. The nearest window is across the corridor. Each cell is furnished with a bed, a metal stool, a small table, a two-drawer metal cabinet, earphones for the prison radio system, a toilet and a cold-water sink. Illumination is provided by a naked 60-watt light bulb. During the entire period of a man's imprisonment, he spends between 14 and 16 hours a day alone in his cell.

Out-of-cell time is spent in a regular and never-changing routine, 5 hours at work or school, 1 to 1 1/2 hours in the recreation yard, and 20 to 40 minutes for each meal. Before the uprising, the men were allowed one shower per week, one commisary trip, and could leave their cell to receive packages (which were searched in their presence), meet with visitors, or go to sick call. On weekends, they spent more time in the recreation yard for organized sports, religious services, or, between October and April, an afternoon movie. During weekdays, the daily routine began at 5:50 a.m., and the men were locked in their cells for the night at 6:30 p.m. They could talk between cells until 8 p.m., after which time silence was required. The lights went out at 11 p.m.; the radio system went off at midnight. During cell time, the only way a man could look up or down the gallery was with a mirror.

Athough the prison claimed to offer vocational training, it is doubtful that any of the jobs were useful for a man after release. Because the prison was always filled to its capacity and the number of jobs was limited, in many cases several men were assigned to the same job and repeated the work that others had already done. In some vocational training programs, as many as 15 men were assigned to a machine that could be operated by only one man at a time.

An inmate's life was regulated by hundreds of petty prison rules, all of his activities were monitored, his mail was read, his radio programs were screened, his reading material was restricted. In addition to the total restriction of his life, he was expected to work at a prison job which paid 30 cents a day, was provided with inadequate food, poor clothing, and required to buy his personal goods from the prison commisary at regular prices. If he had a visitor, it was necessary to talk to the visitor through a steel mesh screen and to precede and follow the visit with a strip search which probed every orifice of his body. He could expect the prison rules to be administered in an arbitrary and discriminatory fashion depending upon the attitude of the individual correctional officer. He could expect no protection from homosexual advances and he could look forward to appearing before a parole board whose policies were either unknown or not well understood. Within the context of this prison society, the individual was expected to prepare himself for life on the outside. The inmate was expected to learn from this prison society how to respect the rights of others and to be a good citizen.

### Gangs

While conditions at Attica have greatly improved since the uprising, they are generally the same as those in many other maximum security institutions. In addition to the physical and emotional conditions of prison life, the growth of gangs has added another explosive element to prison life. These groups usually form along racial and/or religious lines and provide the men with the only way to find some personal strength. The group demands obedience but provides protection for its members. Increasingly, the most violent aspects of prison life grow out of conflicts between gangs, and acts of vengeance committed to correct injustices. The gang problem has become so serious that a California prison official has suggested that the only way to control violence at San Quentin prison would be to segregate inmates by gang membership and fence off portions of the prison yard, with separate areas for different groups.

### *For Discussion*

1. How might conditions and treatment in maximum security prisons affect the first-time offender who is sent there?
2. *Prison in the Classroom*

Select a corner of your classroom and with masking tape, mark off an area nine feet long by six feet wide. Next, use the tape to mark off an area large enough for a bed, table, two-drawer cabinet, toilet and sink. Put a chair or stool in the open area of the "cell." Imagine spending fourteen to sixteen hours each day locked in an area that size. Now, try to remember something that happened to you about two years ago. Since the average Attica prisoner spent about two years in prison and since three out of four of the prisoners had spent time locked up before, you may begin to be able to get a small idea of what prison life would be like.

Sirhan B. Sirhan pleading for his release on parole in June 1983. [UPI]

## Parole

Parole is a process by which prisoners are released prior to the end of their sentences on recommendation of the parole board and prison authorities. It serves several needs. First, it can be used to reward a prisoner's good behavior and thereby shorten the time served behind bars. Second, it can serve to provide guidance for the individual through the supervision of a parole officer, whose function is to see to it that conditions of parole are met and that the parolee makes a successful transition to life on the outside.

There are those who believe that the extensive use of parole is a mistake and makes criminals think that they are being treated with leniency. Others take the view that many men and women in prison can learn to live more effectively in society if they are actually a part of it. Most individuals who spend time in prison are released on parole. For example, in 1980, though the average sentence of all prisoners was 133.9 months, the average sentence actually served was only 15.9 months. Nationwide in 1979, 196,100 inmates were placed on parole. While there is substantial variation state to state, the only thing the public usually hears about parole are its failures and mistakes.

As is the case with probation, there are two principal difficulties in making parole work. One is the process used by prison authorities and parole boards to decide who should and who should not be paroled, and the second is the quality of supervision and of the programs available to help ease the newly released convict into life outside the institution. (Note: Probation is a county or local function in most states. Parole is a state-operated function in all states.)

### The Parole Process

The way in which parole systems operate is generally established by state statutes, or, in the case of federal prisoners, by federal law. Most states have independent parole boards that function as hearing panels to determine whether or not individuals are appropriate candidates for parole. Parole board members are often political appointees who have professional staff members to advise them.

The problem of determining appropriate parole release dates can be complicated by a lack of adequate caseworkers to do the reports on individuals eligible for parole. In addition to gathering information about an individual's behavior while in prison, the case worker also must gather accurate and current information regarding what awaits the prisoner in the community. It is important to know the situation in the prisoner's family, opportunities for employment, access to friends, availability of housing, and the general climate in which the parolee will have to function.

The key element to successful release often depends on employment. If a stable job is available, a prisoner's success in the community is much more likely. Often parole is based on a condition that employment or a reasonable likelihood of employment already exists. Meeting on a regular basis with a parole officer, the offender usually must be able to show that he or she is living up to the conditions of release. Most often these conditions forbid the use of alcohol and the unauthorized association with ex-convicts. Offenders must secure permission to change their residence, to travel from one area to another, to marry, or even to buy a car. The parole officer has the dual problem of trying to develop a positive relationship with his or her parolees, and at the same time, serve as an officer of the system. If necessary, a parole officer may ask that an individual be jailed pending an investigation of parole violations or the commission of new criminal acts. Ideal caseloads are considered to be roughly 35 per officer, and for some serious offender types, caseworkers should have no more than 20 individuals to supervise. In actual practice, case loads are often much higher, up to double or more of the recommended levels.

### A Case Study

In June of 1968, New York Senator Robert F. Kennedy, while passing through the kitchen of the Ambassador Hotel on his way to speak to his supporters after winning the Democratic Presidential primary in California, was shot and killed by Sirhan Bishara Sirhan. Convicted of that murder, Sirhan has been in the maximum security Soledad prison in California. In the spring of 1982, a public debate arose over whether or not Sirhan should be paroled as scheduled. The thought that a killer of a presidential candidate should ever walk free was so repugnant to many Californians that nearly 4,000 letters were sent and petitions bearing signatures of over 8,000 citizens were presented opposing Sirhan's release date. Other citizens maintained that denying release to Sirhan implies that the life of a United States Senator is somehow more important than that of the ordinary murder victim.

Sirhan's attorney claimed that his client had a nearly spotless prison record, that he had already spent almost twice as much time behind bars (13 years) as most murderers in California, and that there is no solid evidence that he is any longer a threat to anyone. The Los Angeles District Attorney argued before the parole panel that appropriate consideration of certain evidence was not given in 1979 when the board originally set his release date. Unknown to the original parole board, Sirhan had written threatening letters to a former defense attorney and a corrections official in the early '70s. One corrections department psychiatrist did not feel this was unusual considering the stress that he was under; others are not so sure. The Los Angeles District Attorney also cited testimony from several of Sirhan's fellow prisoners that he had talked about killing Senator Edward Kennedy and stealing radioactive materials to help Libyan strongman Kaddafi build nuclear weapons. Some serious doubts exist regarding the accuracy of this testimony.

Sirhan did discuss politics openly with sympathetic listeners and has always been an outspoken supporter of the Palestinian cause. He had said that Robert Kennedy was morally guilty of murder for supporting military aid to Israel, and had made other statements about world leaders of the same sort. In its reconsideration of the release date, the board finally decided that they had an obligation to cancel Sirhan's release date. Sirhan reapplied for parole one year later. However, in June 1983, the parole board again denied his request.

### *For Discussion*

1. How are probation and parole alike? How are they different?
2. Do you think public opinion or pressure should influence parole board decisions? Why or why not?
3. What is your opinion in the Sirhan case? Should he have been released? Why or why not?
4. *Ask a Probation Officer*

Contact your local or county probation department or state parole officer and arrange to interview a probation and/or parole officer. Develop some questions based on what you have learned about probation and parole. For example:

- How are parole boards organized in this state?
- How are parole board members chosen or appointed?
- What is the average caseload of a probation officer?
- What is the toughest part of being a probation officer?
- What are the most crucial factors in a parolee's successful transition back to society?

A drug rehabilitation meeting at a halfway house.
[UPI]

## ▶ Staying Out/ A Writing Activity

### Background

Many ex-convicts have difficulty staying out of trouble—and out of prison—once they are released. The following short case study is of one individual who eventually made it and started counseling other offenders.

*When I was very young, my parents put me in an orphanage because I had serious heart problems and they could not afford to get me help. I got into trouble so I was sent to reform school. This is where I got my first education in being a criminal. I learned that stealing was not wrong—it was a way of life. From reform school, I went to the State Penitentiary with a five year to life sentence for murder and armed robbery.*

*When I left prison they gave me $25 and a suit of clothes. I was out three days and I robbed a bank and a hospital. Then I robbed places all over the country. Finally, I was caught for murder and armed robbery and got another five years to life sentence. This time I went to a maximum security prison.*

Before prisoners are released, counselors talk with them. They discuss the inmate's background, parole plans, and expectations of what life will be like outside. After release, the counselor helps the ex-offender find a job and adjust to life in society.

Many ex-convicts have difficulty staying out of trouble—and out of prison—after they are released. Ex-convicts have special needs. Programs have been developed to help them. One such program, the 7th Step Foundation, helps prevent crime by helping soon-to-be-released men and women inmates, released offenders, and juveniles. All 7th Step staff members are ex-offenders themselves.

### Case Study of an Ex-Offender

The following case study is based on an interview with one of the members of the counseling program of the 7th Step Foundation.

*There, one of the inmates with a life sentence without parole organized a group of the most dangerous criminals in the place. I joined the group. We got together to help keep juvenile delinquents from turning to crime. Every Saturday these kids would come into the prison. We would talk to them and show them around. We showed them death row and the electric chair. Well, it really shook them up. That program helped those kids, and it also helped me get turned around.*

### Adjustment Factors

*When I left prison I felt totally helpless and frightened. I didn't know how to talk to a lady, how to take a lady out, or how to dress. Fitting into society is a real problem. You have a feeling you want to make up for lost time—and it's hard to sit still even for five minutes.*

*As far as adjusting to society, I don't know how long it will take. For me, getting in my car and coming to work is a thrill. To go to the icebox and get a drink is a great feeling for me. I've only been out four months. That's a small amount of time compared to 21 years in an institution! The adjustment period is not over, and I don't have any more chances. Next time I'll be sent away for the rest of my life.*

### Thoughts on Criminality

*I've been a thief all of my life, and I've been a pretty good thief. For me, it is easy to be bad and it's a struggle to be good. I could go out and just like that get money. It's my profession—it is illegal—but it is the only thing I am good at—so far.*

*I think I would rather be a criminal than a beggar. I wouldn't even accept Social Security—it's like begging and that's as low as you can go. And I wouldn't take welfare. I'd go back to stealing first.*

### Getting a Job

*How do you tell someone you've been in prison 21 years—how do you tell them? How do you tell them you've been arrested for murder? How do you tell them these things and then expect them to give you a job?*

Imagine that you are an offender recently paroled and trying to stay out of prison. Write a journal of your experiences in the first few weeks after release. Include the following incidents and give an account about how you dealt with them. These journals can be read in class and discussed.

- Finding a place to live
- Interacting with family and loved ones
- Job search and job interview
- Meeting old friends from your criminal days you are forbidden to associate with
- Reflections on your time in a maximum security prison.

## The Death Penalty

"Capital punishment," more commonly referred to as the death penalty, involves the government execution of people who are convicted of such crimes as murder or treason. *Capital* comes from a Latin word, *capita*, meaning head. In ancient times, capital punishment was often carried out by the state executioner who beheaded the convicted person. Other methods of capital punishment include death by shooting, hanging, electrocuting and gassing.

Capital punishment is an old custom. It has been used in ancient and modern societies. Most western countries in the world today, however, have stopped using capital punishment. Canada, France and the United States are the main exceptions.

Within the United States the use of capital punishment varies from state to state. However, once a person has been sentenced to death, practices are usually quite similar. A person who is sentenced to die for committing a crime is usually kept in a special section of a prison reserved for inmates who are to be executed. This section is known as "death row." As of January, 1983, 1,137 men and women were living on Death Rows across the country awaiting their death.

Usually, the prisoners on death row have little contact with other prisoners. Each occupies a small cell alone. Death row prisoners cannot see the other inmates and often take their meals and exercise alone. This life may continue for many months and even years as the person awaiting execution appeals his or her case to the courts, or simply waits for the sentence to be carried out.

The most common methods for executing people in the United States, who have been sentenced to death, are through electrocution and gassing. It is contended that these are the most painless and humane methods, although some observers dispute this claim.

In California the gas chamber is used. It is a large steel cell with windows on three sides. The cell can be closed so that it is airtight. Once the convict is strapped into one of the two chairs in the cell, a cyanide pellet is released into a mixture of sulfuric acid and water located under the chair. As the pellet dissolves, a deadly vapor of cyanide gas escapes and fills the cell. After breathing this gas for about twenty seconds, a person loses consciousness. It takes up to fifteen minutes for the person to die.

### Use of the Death Penalty

In earlier times, the death penalty was used to punish people for committing many different offenses including picking pockets or stealing a loaf of bread, as well as for committing murder and treason. During the 1800s in England, for example, there were 270 capital offenses or crimes punishable by death. During this same period, the United States also had a large number of crimes punishable by death. Gradually, however, public protest and demand for reform reduced the number of capital offenses in both countries to no more than fifteen, with most of these offenses involving some kind of first degree murder, showing deliberation, willfulness and premeditation.

Historically, each state within the U.S. has had the power to make its own laws regarding the use of capital punishment. In over ten states, capital punishment does not exist. Other states require the death penalty only for certain kinds of murders.

States that have capital punishment as a penalty must have a legally defined standard for deciding when capital punishment shall be administered. That is, they must clearly state in the law under what conditions and in what situations the death penalty will be used. Usually, a sentence of death carries with it an automatic right to appeal.

### The Argument Reaches The Supreme Court

During the 1975–76 term, the U.S. Supreme Court was asked to decide whether the *methods* several states used for deciding who would be sentenced to death were constitutional. More specifically, the Supreme Court had to decide if the death penalty laws of certain states violated the Eighth Amendment's provision against "cruel and unusual" punishment, and the Fourteenth Amendment's guarantee of "due process of law." In addition, the justices heard arguments about whether capital punishment itself was unconstitutional.

The cases which reached the Supreme Court in 1976 had come about as a result of the Court's 1972 decision in the case of *Furman v. Georgia*. In the *Furman* case, the Court considered a method in which the death penalty was mandatory, was automatically given, in all first degree murder convictions *unless* the jury recommended life imprisonment. The Court ruled that this method was unconstitutional since the jury had no rules to go by in making their decision. This made their decision arbitrary, said the

Court, and, therefore, unconstitutional. It violated both the Eighth Amendment and Fourteenth Amendment. However, a majority of the Court did *not* rule that capital punishment itself was unconstitutional.

Thirty-six states changed their laws on capital punishment after the *Furman* decision. Each came up with a slightly different method for determining which convicted defendant should be executed. The series of cases which were presented to the Supreme Court on March 31, 1976, contained two basic methods which affected approximately 25 states.

In the first type of statute, every defendant who was convicted of a capital offense was automatically sentenced to death. The laws did not give the jurors any choice at all about the penalty, even if they felt the defendant deserved life imprisonment rather than the death penalty. The two cases which involved this type of statute came from Louisiana and from North Carolina.

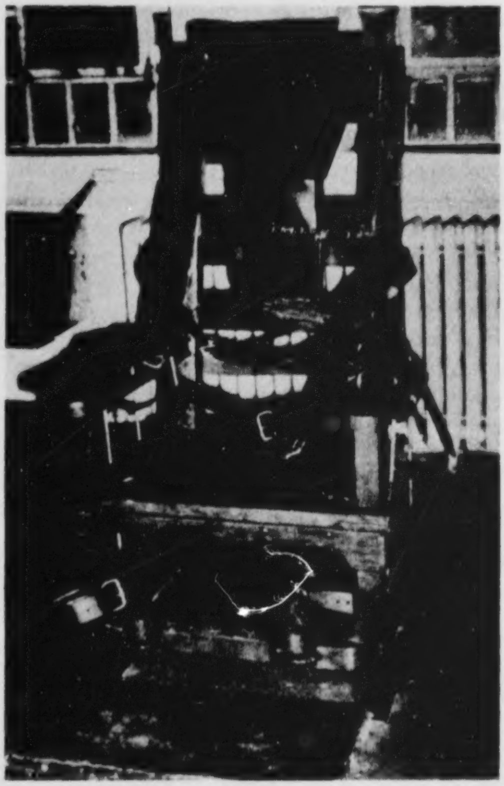
In the second type of statute, after finding a defendant guilty of first degree murder, the jury was told to consider everything about the defendant and the crime. This included both the *aggravating circumstances*, or those things which made the crime horrible or vicious, such as a long prior record of the defendant, a lack of sorrow on the part of the defendant, or a particularly ugly type of crime, and the *mitigating circumstances*, or those which called for mercy on the part of the jury. Mitigating circumstances were either listed in the statutes, or left entirely to the jurors' discretion, depending on the state. Examples of these circumstances, which seem to make the defendant or the crime less terrible or more understandable, are the absence of any criminal record of the defendant, the fact that the defendant is young and extremely sorry he or she ever committed the crime, and the fact that he or she may have been forced by someone or some circumstances to commit the crime.

The juries in Georgia, Florida and Texas who were bound by this type of law were told to balance the two types of circumstances against each other, and to recommend the death penalty only if the aggravating circumstances outweighed the mitigating circumstances.

Since 1976, the Court has ruled on several cases challenging various state death penalty statutes. In general, it has struck down the first type as going too far, because they required death without regard to circumstances. The second type, however, have been sustained. According to the Court, the death penalty is acceptable as long as the judge and jury give consideration to both aggravating and mitigating circumstances and the former predominate. Over 37 states passed statutes designed to meet Court standards.

### Pro and Con

When the Supreme Court listened to the arguments of both sides, the justices found themselves in one of the most crucial and complicated legal battles of the century. The chart below summarizes the arguments they heard. Read them over and decide which you agree with.



The electric chair at the Indiana State Prison. [UPI]

| **Arguments in Favor of the Death Penalty** | **Arguments Against the Death Penalty** |
|---|---|
| 1. The existence of capital punishment keeps people from committing serious crimes. It is hard to say how well this "deterrent effect" works, but because legislatures in many states have studied the problem and decided that it does work, the Supreme Court must agree with them. | 1. Capital punishment has *no* deterrent effect. In states which have abolished the death penalty, murder rates have declined or remained the same. Most people who commit crimes do not believe they will be caught, while many others *want* to be punished. These people will not be deterred. |
| 2. If a person takes another's life, he should pay for the act by giving up his or her own life. "An eye for an eye and a tooth for a tooth." This is in accordance with the *punishment* purpose of the criminal justice system. | 2. Capital punishment is a wrongdoing on top of a wrongdoing. It does not help the victim of the original crime, causes loss to the family of the accused, and embarrasses all civilized people. Besides, locking a criminal up for the rest of his or her life is punishment enough. |
| 3. Capital punishment is in accordance with "due process of law." It is reserved for only the most serious crimes. Jurors are told to consider it very carefully, and there are many steps in the appeals process. | 3. Capital punishment involves so much chance and arbitrary decision-making that it is like a lottery rather than "due process of law." Chance is involved in the prosecutor's choice of which crime to charge the accused with, and whether or not to plea bargain. It comes into play in a jury's view of the defendant and the crime, in the choice of an appeals judge of whether or not to review the case, and in a governor's decision whether or not to grant clemency. This is too much chance when a person's life is at stake. |
| 4. Some people are so bad that they cannot be rehabilitated enough to live in society. Those who have committed serious crimes should be executed to make sure they never harm anyone again. | 4. Life imprisonment without chance of parole would keep criminals who could not be rehabilitated off the streets just as well as executing them would. Studies have shown that most murders are committed by people who are unlikely ever to do it again, so they are not usually the most dangerous people, but may be the *most easily* rehabilitated. |
| 5. Capital punishment is allowed by the Bill of Rights itself. The Fifth Amendment says that no person shall be deprived "of *life*, liberty, or property without due process of law." These statutes give them "due process of law" prior to sentencing them to death. | 5. Although capital punishment may not be specifically prohibited in the Constitution, customs and conditions have changed during the past few years. It cannot be doubted that slavery is no longer acceptable in the United States, but it was protected by the Bill of Rights and the Constitution when they were adopted. Just as slavery is no longer acceptable, the death penalty is now considered "cruel and unusual" punishment, and should be outlawed. |

***For Discussion***

1. Look over the arguments for and against the death penalty. Which side do you agree with? Why?

2. *Research the Law*

Consult a criminal judge or lawyer or visit the library and answer the following questions. Be prepared to report on your answers.

- Is there a death penalty in your state? Under what circumstances does it apply?
- Are there any prisoners on death row in your state? If so, how many?
- What is the method of execution, if any, employed in your state?

A condemned man on his way to the electric chair.
[UPI]

## ▶ Life or Death/ Activity

### *Procedure*

1. Divide the class into four groups. Each will play the role of the sentencing jury in the cases described below. Each jury will be asked to decide one of the cases using the following capital punishment statute:

### *Statute*

After *finding a defendant guilty of murder in the first degree, the jury shall look at the circumstances of the crime, and at the character of the individual defendant. If it finds the aggravating circumstances of the crime and the defendant outweigh the mitigating circumstances, it shall return a recommendation of the death penalty. Otherwise, it shall recommend life imprisonment.*

2. The defendant in each case has already been convicted of first degree murder. It is the job of each jury to determine the penalty for each defendant. The only two choices available are life imprisonment or death.

3. When jurors apply the statute, they should first make a list of the *mitigating circumstances*, those which seem to call for mercy. Jurors should also make a list of all the *aggravating circumstances*, or those which make the crime violent or repulsive. Jurors should then weigh or balance the *mitigating* and the *aggravating* circumstances against each other. If they feel the case calls for leniency they should recommend life imprisonment. On the other hand, if, in the opinion of the jurors, the case is barbarous or savage, they should recommend death.

4. When each jury is finished, one member of it should make its recommendation of the proper penalty to the entire class. The recommendation does not have to be unanimous. Each law in question requires only a majority of the jury to agree on the sentence for it to be recommended.

### Case 1

*Name:* Luby Waxton
*Age:* 24
*Sex:* Male

Luby has been in and out of jail ever since he was a teenager. He was convicted of shoplifting, burglary and assault with a deadly weapon. He received a light sentence for each.

On June 3, 1974, Waxton began drinking early in the morning. He and a friend of his planned a robbery of a local grocery store to get some money. That afternoon Waxton bought a small handgun.

He and three others drove to a market. Waxton and his friend Tucker entered the store, bought some cigarettes and then announced a holdup.

Waxton went behind the counter and emptied the cash register. He put his gun to the sales clerk's head and pulled the trigger. The clerk, an old woman, died instantly.

Waxton was convicted of robbery and murder in the first degree. (Tucker was given a lighter sentence for testifying against Waxton and the other two accomplices.)

### Case 2

*Name:* James Woodson
*Age:* 18
*Sex:* Male

Woodson has no prior record of being arrested.

Woodson was home from college for the summer. He met Luby Waxton in the early afternoon of June 3, 1974, and he joined him in drinking.

Woodson tried to go home, but Waxton and his other friends pistol whipped Woodson until he agreed to accompany them on the robbery.

Woodson remained in the getaway car when Waxton and Tucker entered the store. Woodson was carrying a rifle, but he did not shoot it during the holdup. He watched as a man entered the store, but did not try to stop him. The man was shot once he was inside. Woodson drove the getaway car as the robbers escaped.

Woodson was convicted of robbery and first-degree murder as an accomplice of Waxton.

**Case 3**

*Name:* Mary Davis
*Age:* 45
*Sex:* Female

Although Mary has no prior criminal record, she has been in the care of a psychologist for the past six years. Mary is the mother of six children ranging in age from 8 to 20.

Mary Davis and her husband Sam went to a party at the home of a friend. Both drank heavily for several hours. Around midnight, Davis saw her husband talking with a beautiful young woman. Mary accused Sam of trying to seduce the young woman, and of having many other affairs with younger women. Sam dragged Mary out of the party as fast as he could.

The Davises had a loud quarrel which was heard by their neighbors as they walked home. Once inside the house the argument continued for over an hour.

Sam struck Mary several times. Mary ran into the kitchen and grabbed a butcher knife. She warned her husband that if she ever caught him with another woman again that she would cut them both up.

Sam had another drink of whiskey, and he threw the bottle at Mary. Mary then stabbed her husband nine times. She called the police and turned herself in immediately afterwards.

Mary Davis was convicted of first degree murder.

**Case 4**

*Name:* Joyce Williams
*Age:* 23
*Sex:* Female

Joyce has no prior record.

On September 10, 1972, Joyce called the police and reported that she had been raped by a man named Gregg. She was taken down to a hospital where a doctor examined her. He said he could find no evidence of rape.

The police investigated her report and told Joyce that they could not arrest Gregg. It was dark, they said, and so Joyce could have been mistaken about the identity of the attacker. Besides, they said, Gregg had a perfect alibi for the night in question.

Joyce decided to teach Gregg a lesson. She waited around the corner where he first attacked her. When Gregg approached, she told him that she was looking for him, and was glad to see him. She suggested that they go somewhere for a drink. They got into her car, drove to a secluded spot, and she shot him six times.

Joyce Williams was convicted of first degree murder.

***For Discussion***

1. One of the aims of the death penalty is to prevent other people from ever committing crimes due to the fear of being executed. That is the so-called "deterrent effect." Do you think the death penalty deters murders? Why or why not?
2. Do you think capital punishment is "cruel and unusual" punishment? Why or why not?
3. If you were on an actual jury in a capital case, could you vote for the death penalty if circumstances warranted it? Why or why not?

## ▶ Corrections in America–What's Your Opinion?/ An Activity

We each have opinions on an almost unlimited number of subjects. These opinions influence the judgements that all of us make about people and events. Often, we are not even aware of the values that our opinions are based upon. Sometimes we support an abstract principle such as justice without ever stopping to apply the principles to actual events.

In the blank space in front of each item place the letter(s) that indicate the extent to which you agree with that statement.

After you have marked your responses, discuss them with a few other students in your class. How do their views differ from yours?

**SA**–strongly agree **A**–agree **U**–uncertain
**D**–disagree **SD**–strongly disagree

____ 1. Ex-convicts should be allowed to vote and to hold any job for which they are qualified.

____ 2. Those arrested and charged with crimes should be held in jail until guilt or innocence is decided at their trials.

____ 3. Most individuals now in prison should be released on parole. Only the violent or professional criminals should be kept in prison.

____ 4. Tough judges who hand out long sentences to those who break the law will make people think twice before they commit crimes.

____ 5. Inmates should be held in prison until those in charge are sure they won't commit more crimes after release.

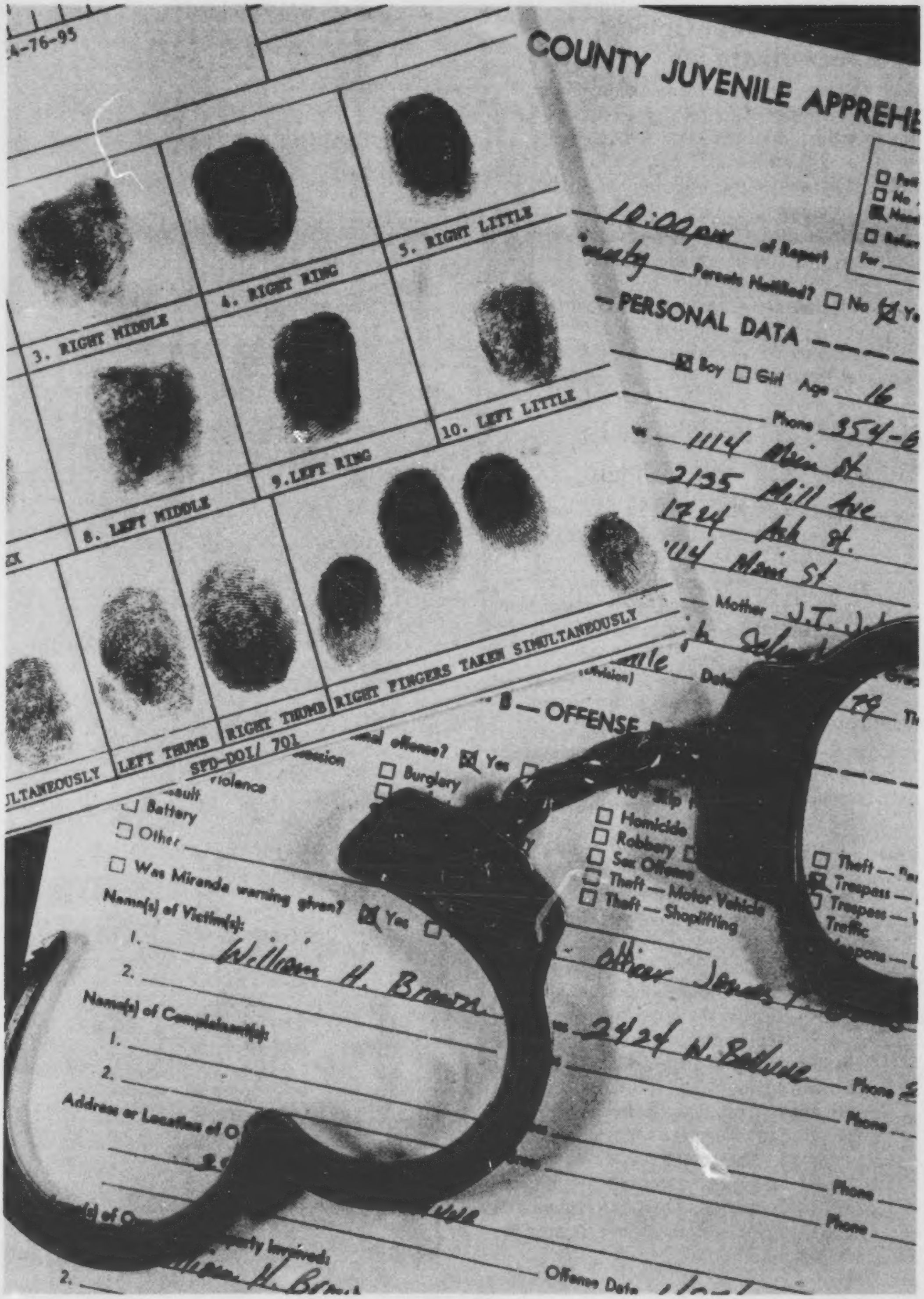
____ 6. The reason we have prisons is to punish criminals.

____ 7. Drug addicts and alcoholics should be treated and counseled rather than put in jail.

____ 8. If the public was more willing to help ex-convicts, maybe fewer would get into trouble again.

____ 9. Instead of prison, criminals should be required to take jobs so they can pay their victims for the crimes they committed or do something that helps the community.

____ 10. I wouldn't mind having a halfway house where ex-convicts live located in my neighborhood.



A-76-95

3. RIGHT MIDDLE

4. RIGHT RING

5. RIGHT LITTLE

8. LEFT MIDDLE

9.LEFT RING

10. LEFT LITTLE

LTANEOUSLY

LEFT THUMB

RIGHT THUMB

RIGHT FINGERS TAKEN SIMULTANEOUSLY

SPD-DOI/ 701

COUNTY JUVENILE APPREHE

10:00pm of Report

Parents Notified? ☐ No ☒ Y

PERSONAL DATA

☒ Boy ☐ Girl Age 16

Phone 354-

1114 Main St.

2135 Mill Ave

1724 Ash St.

1114 Main St

Mother J.T.

B — OFFENSE

al offense? ☒ Yes

☐ Burglary

Battery

☐ Other

☐ Homicide

☐ Robbery

☐ Sex Offense

☐ Theft — Motor Vehicle

☐ Theft — Shoplifting

☐ Theft —

☒ Trespass —

☐ Trespass —

Traffic

Weapons —

☐ Was Miranda warning given? ☒ Yes ☐

Name(s) of Victim(s):

1. William H. Brown

2.

Name(s) of Complainant(s):

1.

2.

2424 N. Bellevue Phone

Phone

Address or Location of O

Phone

Phone

Offense Date

[CRF Photos]

# Juvenile Justice

In 1716, Elizabeth Hickes of Huntington, England, was accused of witchcraft. Her neighbors reported that Hickes used dolls to cast evil spells. She'd made a number of her enemies very sick. After hearing the evidence, a judge found Hickes guilty as charged and she was burned alive at the stake. Elizabeth Hickes was born in 1705; she was 11 years old.

What if Elizabeth had been born in 1905, 1945, or 1975? In the first place, times have changed and practicing witchcraft is no longer illegal. But what if it were? Imagine that Elizabeth Hickes found herself in court today.

For one thing, she wouldn't get a trial; she'd have a hearing. It would take place in a special juvenile court. Her family history, her school records, and other personal information would be closely examined and assessed. Even if the juvenile court judge decided something was wrong with Elizabeth, the child wouldn't be punished. Instead, the court would prescribe a special rehabilitation program designed to help Elizabeth adjust to society. Why are children treated so differently today?

Nineteenth and early twentieth century reforms produced two separate systems of justice in America, based on almost opposite philosophies. The adult criminal justice system is applied to supposedly mature, responsible persons who have lived, depending on the state, at least 16 or 18 years. All those younger than the specified age fall under the jurisdiction of the juvenile justice system.

Though this dual system has by now been generally accepted, it is not without its critics. Many Americans believe that all persons in trouble with the law, no matter what their age, should have the benefit of the due process protections found in the adult system. Others argue that juveniles should be processed according to the rules of the adult system not for their protection, but for society's protection. They feel that the juvenile justice system, with its emphasis on rehabilitation, puts too many young, hard-core criminals back on the streets. The fact that these criminals are only 14 or 15 doesn't prevent them from committing crimes and ruining other people's lives. Others have yet another perspective: whether or not the theory behind our current juvenile system is correct, it just isn't working. Modifications must be made for the benefit of troubled young people and for the good of society.

After exploring the history and philosophy of the juvenile justice system, this chapter examines issues raised by both critics and supporters. Who's actually in the system? Who ought to be there? What rights should young people have as protection against the system? What happens to juveniles in the system and why? What alternatives are open to people who want to change the system?

Finally, statistics show that people under 18 are responsible for almost 20% of American crime. An examination of how juveniles are currently treated under the law and ways in which that treatment can be improved to reduce juvenile crime is necessary before we can find solutions to our crime problem.

## History, the Child and the Law

Take a look at a family portrait or a city scape painted during the Middle Ages or the Renaissance. The children, adolescents and adults in these pictures all wear the same kinds of clothing. They are often engaged in the same activities. In many cases, the artists have replaced the soft, round features of childhood with harder grown-up faces so that the only difference between the young people and the adults is that the children are shorter.

### Short Adults

Such paintings accurately reflect their cultures' attitudes toward children. In the Middle Ages, families needed every available pair of hands to grow enough food, forge enough iron, or weave enough cloth for survival. Ordinarily, children were integrated into adult activities as soon as they could walk and talk and did as much work as they were able to by the age of five or six.

Shorter life expectancy was another factor which forced people into early adulthood. In a 40-year lifespan, there isn't time for a leisurely childhood, much less an adolescence. King Henry II first rode into battle in 1142 at the age of nine. By 21, he had reconquered the English throne. Joan of Arc was only 19 when burned at the stake for driving the English from French soil. Queen Isabella of Castille began unifying the Spanish kingdom at 18; Ivan the Great was just 22 when he took over the Russian throne.

Children not only were expected to work hard, they were also expected to obey adult laws. Anyone old enough to commit a crime was thought old enough to be punished for it. Painful forms of trial, like ordeal and combat, and harsh punishments, like being burned at the stake or drawn and quartered, were the fate of all criminals, no matter what their ages.

In the 16th and 17th centuries, largely due to Christian beliefs that children had souls, these medieval attitudes began to soften. Though children were still thrust into adulthood at the age of four or five, societies developed more tender feelings about them. People began to think of children as innocent and weak. Unable to fend for themselves, children needed adult protection. Naive and gullible, they needed adult guidance. By the 18th century, most of Europe came to believe that childhood was a special time, and children were able to get more training and guidance before entering the adult world.

In England, this new view was reflected in the common law. The King or Queen became the *parens patriae* (the parent of the country). Using his or her power as a superparent, the Monarch could intervene in criminal, civil, even private family matters to protect the interests of the nation's children. Since English courts represented the royalty, the common law recognized a judge's right, under *parens patriae*, to protect a child's property from wasteful parents, manage orphans' estates, and provide for abandoned young people.

### The Age of Reason

At about this same time, another important concept worked its way into English common law: the idea of intent. In order to commit a crime, a person not only had to perform a forbidden action which resulted in harm, he or she also had to *intend* to commit that act. (A more detailed examination of criminal intent is included in Chapter 1.)

The concept of intent had a direct effect on the treatment of children under English common law. Society now believed that children were naive and innocent. Though they might accidentally cause harm, children did not know enough about right and wrong, or about the effects of their actions, to form "criminal intent." Since they couldn't form intent, children couldn't commit crimes. At what level of maturity was a person capable of forming criminal intent and, therefore, committing crimes?

The 18th century's answer to this question was based on Christian beliefs which held that seven was the "age of reason." After age seven, according to the Church, children knew the difference between right and wrong and became responsible for their actions and moral decisions.

By the late 18th century, English common law had taken this rationale one step further. English judges usually dismissed cases against defendants who were under seven. In recognition of society's changing view about the length of childhood, they also dismissed cases against persons aged 7 to 14 unless the prosecution could offer special proof that the child was capable of forming criminal intent. In a 1796 case, for instance, the prosecution successfully argued that the 10-year-old defendant was capable of forming criminal intent and was guilty of murder because the child had hidden his victim's body. In the eyes of the court, this was proof that the boy knew he'd done wrong.

Prior to the 1870s, the English criminal justice system treated everyone over 14 years old (and everyone between 7 and 14 whose capacity to form criminal intent had been proven) exactly alike. Officially, all were tried in the same courts in accordance with the same rules. If convicted, all were locked up in the same jails and subject to the same harsh penalties. In actual practice, however, the system showed children and adolescents some leniency. For example, although English courts sentenced 103 persons aged 8 and under to death between 1801 and 1836, not one of these executions actually took place.

Colonists transplanted the English common law, complete with the concepts of *parens patriae*, criminal intent, and the age of reason, to North American soil. The religious beliefs of many of the first settlers emphasized the need to train children for obedient, religious and productive adult lives. These beliefs gave parents primary responsibility for their offspring's development. Some early colonial laws even held parents criminally liable for their children's misbehavior.

The desire to educate children for proper adult living strengthened the notion that children needed special guidance. It also encouraged the theory that children and adolescents with proper instruction could more easily correct their misbehaviors, learn from their mistakes, and change their ways than adults. In short, early Americans came to believe that, while adult criminals deserved harsh punishment, children who had strayed could be saved and rehabilitated.

### Save the Children

Nineteenth century America was a very different world from that which greeted the first settlers. As early as 1820, factories were springing up across the northeast and the nation's urban population was growing faster than its rural population. In 1820, 7% of America's people lived in cities. That proportion had risen to 15% by 1850 and 35% by 1890. Both these trends, industrialization and urbanization, grew as the century progressed. Both caused profound changes in American social institutions, especially in the family.

Many of the new city residents were immigrants. Others were country people looking for greater opportunity and a path out of the dull and difficult rural lifestyle. Survival in the city was a full-time occupation. Crowded into small rooms with parents who were struggling to cope with these stresses, life could be very unpleasant for urban children. Understandably, they often escaped to the streets. Other children were abandoned by their parents and turned to picking pockets, shoplifting, begging and looting for survival.

Often, the young people banded together. As early as 1791, children's gangs were noted on the streets of Philadelphia panicking horses with firecrackers. During the 19th century, gang activity changed from hijinks to serious crime. By the Civil War, youth gangs were involved in arson, mob violence, and regularly fought battles with the police.

Though citizens' groups in every American city exhibited concern about these wayward youngsters, people were unsure about how to solve the problem. If caught in a crime, children over 7 and under 14 often faced prosecution in the adult criminal justice system. Yet, they were not sophisticated enough to understand the complexities of the law or afford the assistance of an attorney.

Questions also arose about how the adult criminal justice system treated children from minority and immigrant groups. What jury of white, middle-class males would believe the word of a 14-year-old Irish street urchin over that of a 45-year-old Anglo-Saxon shopkeeper? Policemen, jailers and judges shared the nation's racial and ethnic biases. For example, a study of 14 juveniles condemned to death in the U.S. between 1806 and 1882 reveals that only two children were actually executed. Both were black slaves.

At best, juveniles who passed through the adult system landed in adult prisons. Many people questioned the wisdom of this result. Through contact with older criminals, children learned to perfect their skills at robbery, mayhem and murder. Also, then as now, adults in prison regularly abused younger and weaker inmates.

### Houses of Refuge

Early in the 19th century, American cities began to experiment with solutions to their problems. In 1824, using *parens patriae* as its rationale, the New York City government established the New York House of Refuge for abandoned, deprived and criminal children. Other state and local governments soon followed suit. These institutions, which came to be known as reform schools, opened their doors in almost every large urban center.

Many of the children placed in reform school were not guilty of any crime. Instead, they had been merely deserted by their parents or found roaming the streets. Sometimes, parents couldn't control their children and asked to have them removed by the authorities. At other times, government officials took children away from parents they considered unfit. Since children were usually required to stay at the institution until they reached the age of 21, confinement could last 10 to 15 years.

Many of the first reform schools were run by private organizations. Youngsters' bad habits were broken by a combination of religion, education and hard work. Residents rose with the sun and attended a few hours of class before breakfast. They spent the morning and afternoon laboring in the schools' fields or workshops. After dinner, they returned to the classroom for worship and more study. This curriculum tried to reproduce the moral and vocational training of the typical rural American home. For a time, it seemed to work.

As the century progressed, Houses of Refuge, with their virtually free supply of labor, began to operate not for reform, but for profit. Moral and practical education were de-emphasized. As headmasters pressed for greater productivity, children spent more time in workshops and less in classrooms.

Though the goods produced were sold in the marketplace, children in reform schools were not paid for their labor. Nor was the money children earned spent solely on school upkeep, food, fuel or new clothing. Living conditions at these institutions deteriorated and, not surprisingly, many young people rebelled. In 1859, 15-year-old Dan Credan set fire to the Massachusetts Reform School. Two years later, in another part of the state, angry girls also burned their school to the ground. Reform schools, like prisons before them, came to be known as "universities of crime."

### Stuck in the System

In 1838, Mary Ann Crouse was committed to the Philadelphia House of Refuge because her mother complained about her behavior. By the time her father learned of the court's action, Mary Ann was already under lock and key. When the House of Refuge refused to release Mary Ann to her father's custody, Mr. Crouse began a long legal battle to get his daughter back.

First, he filed a petition of *habeas corpus*, which the courts promptly dismissed. Next, he hired a lawyer and filed an appeal with the Supreme Court of Pennsylvania. He charged the House of Refuge with violating his daughter's constitutional rights because Mary Ann had been locked up without a jury trial as guaranteed to all Americans under the Sixth Amendment.

After lengthy deliberation, the court ruled in favor of the House of Refuge. The court stated that the Bill of Rights did not apply to juveniles and that the Sixth Amendment had no bearing on Mary Ann's case. That Amendment mandated a jury trial to determine an accused person's guilt or innocence. Since Mary Ann was not accused of any crime, there was no need for such a determination in her case.

According to the court, Mary Ann was institutionalized not because of criminal guilt, but because her mother no longer wanted to take responsibility for her upbringing. Citing the doctrine of *parens patriae*, the court declared that the state, in this instance represented by the House of Refuge, had every right to assume the parental role. As the court concluded, Mary Ann "had been snatched from a course which must have ended in confirmed depravity, and not only is the restraint of her person lawful, but it would be an act of cruelty to release her from it.* (4 Warden [PA]9, 1838)

### *For Discussion*

1. At what age do you think children should be held criminally responsible for their actions?
2. What were the negative effects of placing juveniles in the adult criminal system?
3. Imagine that you were in a reform school during the early part of the 19th century. Write a letter to a friend describing your day.
4. What arguments can you think of against keeping Mary Ann in the House of Refuge?

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*Case and quote cited in Schlossman, Steven L., *Love and the American Delinquent*, University of Chicago, Chicago, Ill., 1977, p. 9.

## From Criminal to Delinquent
### A Time for Reform

American cities didn't rely entirely on reform schools as they attempted to cope with young people in trouble. During the latter half of the nineteenth century, other innovative ideas developed as well. Since contact between juveniles and adult criminals was seen as a major problem, many states began segregating children during pre-trial procedures. By 1870, courts in New York, Massachusetts and Rhode Island set aside special dates and times for juvenile trials, kept juvenile records separate from adults, and sentenced juveniles to age-segregated prisons.

Several years earlier, during the 1840s, Massachusetts began experimenting with probation as an alternative to imprisonment. This new idea, the brainchild of a man named John Augustus, gave criminals a second chance. Under probation, a judge could hold off the sentencing process and return a convicted person to the community. If the convict kept out of trouble, no prison sentence was served, thus saving the state the cost of incarceration and the convict the trauma of a gruesome jail experience. On the other hand, if the person persisted in criminal activity, probation was revoked and the convict returned to court for sentencing and punishment.

Though often successful with adults convicted of a first offense or a minor violation, probation presented some difficulty when applied to young, urban criminals. Sending them back to their communities usually meant a return to an environment which was the root of their problems. If a juvenile's family couldn't provide a good home, the courts sometimes tried to identify a relative or family friend to take responsibility for the child's probation. This led to the development of a third innovation: the foster family. Recognizing that reform schools could cause more harm than good, government officials compiled lists of trustworthy families and individuals who could provide temporary care for children in trouble. Though each of the experiments in juvenile reform was successful to some degree, by the 1890s, it became obvious that more inventive methods were needed.

The situation in Chicago was especially bad. The Chicago Reform School was a hotbed of vice and crime. In fact, judges preferred to send all but the most hardened juvenile offenders to the adult jail. They felt that the jail was a safer environment. The school's reputation was so bad that when it burned in 1871, the government refused to provide money to rebuild it. This left Chicago, one of the nation's largest cities, with *no* system for handling neglected or criminal young people.

The Chicago Women's Club stepped in to fill the gap. They set up a school for young people serving time in the city's jails and opened a city police station for women and children arrestees so they wouldn't have to mingle with hardened male criminals. Working with juveniles made Club members come to some radical conclusions. It seemed that treating juveniles in the adult criminal justice system was a futile effort. Why not start over and build a separate justice system, just for juveniles, based on new principles more clearly related to the needs and problems of children?

In the first place, Club members believed that no rational adult could hold children responsible for their actions. Wayward, disobedient and criminal behaviors, they believed, were diseases caused by poverty and neglect, circumstances over which a child had no control. One might as logically blame children for catching the measles as blame them for running away from troubles at home or following the bad example set by friends.

Secondly, the adult concept of crime as a specifically prohibited act was too limited for use with children. Certainly, young persons had to be prevented from robbing, raping and murdering. But they also must be protected from other, less well–defined actions, like associating with immoral people, staying out too late at night, or disobeying authority. These actions greatly damaged young people by encouraging bad habits and leading to more destructive behaviors.

Furthermore, it was unfair to label children as "criminals." A new word for wrongdoers was needed. The word delinquent seemed much more appropriate. The Women's Club also decided that children convicted of crimes should not be punished. Instead, young persons who committed delinquent acts should be taught not to repeat their offenses by re-education or rehabilitation. Moreover, young persons should not necessarily undergo the same rehabilitation programs. Some children would best benefit from the harsh life of reform school; others would do better in the gentler care of foster parents; still others could be returned to their families on probation.

Finally, since no one was being punished, there was no need for the carefully regulated trial process of the adult courtroom. That process tended to intimidate children and might be more a hindrance than a help, the Women's Club reasoned. In order to consider each child's best interests and deliver the personalized justice demanded by this new system, a judge needed more freedom than adult procedures permitted. Judges hearing juvenile cases should work in informal rooms, more like libraries than courtrooms. Methods of questioning and decision-making should also be flexible and informal. Only in such a non-adversarial atmosphere could judges determine appropriate ways to help young people in trouble.

When the Women's Club first raised these ideas in 1892, its own lawyers argued that the proposed new system was unconstitutional. Not only did it reverse or suspend the basic principles of American justice, it stripped the accused young persons of their guaranteed rights. Club members retorted that children needed help, not rights.

In spite of the initial negative response, the Women's Club proposal was widely discussed. In 1898, the Illinois State Board of Charities asked the Chicago Bar Association to draft legislation based on the Club's plan. After revision, the Juvenile Court Act was passed by the Illinois legislature and the nation's first juvenile court offically opened its doors on July 1, 1899.

Other states responded enthusiastically to this new system. Within 25 years, all but Maine and Wyoming had passed laws based on the Illinois model. Over the years, civil court decisions and administrative policies have slightly modified the juvenile justice system, but systems currently used to handle young people in trouble throughout the United States owe their roots, both in principle and in practice, to that first Chicago experiment.

A juvenile being processed after arrest. [CRF Photos]

**For Discussion**

1. Do you agree with the reasoning advanced by reformers in the Chicago Women's Club? Why or why not?

2. *The Nature of Justice/ An Activity*

Are young people incapable of forming criminal intent? Should they be absolved of responsibility and guilt for their actions? Should they be treated rather than punished when they harm others?

Working in small groups, examine each of the four pairs of cases listed below. In each, after considering the individuals' intent and responsibility, decide whether or not the juvenile and the adult should receive the same treatment and/or punishment. After your group decides about all the cases, present your findings to the class and compare your decisions with those made by other groups.

**Case 1**

- Jerry, aged 27, lives in an adult apartment complex. One of his neighbors regularly holds loud parties which last long into the night. After a frustrating confrontation late one evening, Jerry picks up a rock and throws it through his neighbor's window.

- A neighbor chases Harold, aged 10, and his friends from her yard and warns them not to play baseball on her property. In retaliation, Harold throws a rock through her window.

***Case 2***

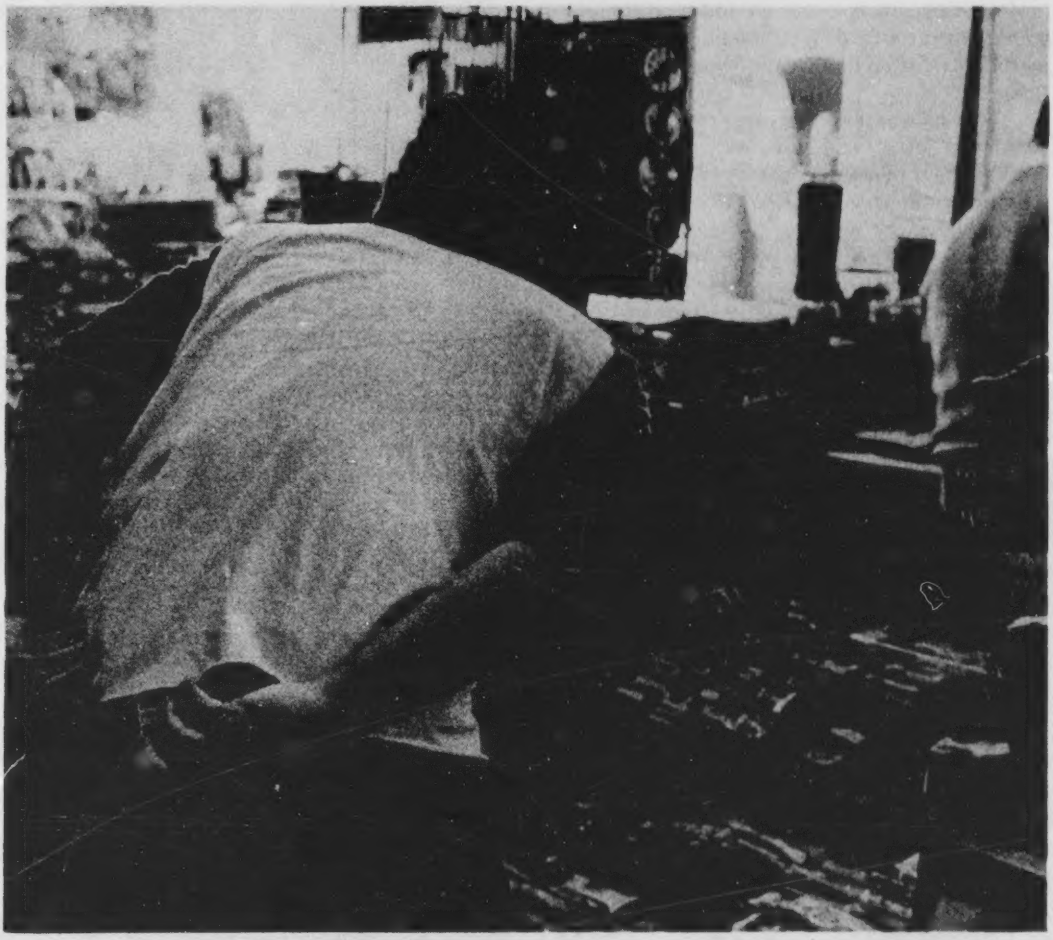
- Cynthia, aged 35, finds out that her husband is leaving her. At the height of an argument, she kills him.
- Mike, aged 8, is furious with his 4-year-old sister for ruining his favorite toy. He picks up his father's shotgun and kills her.

***Case 3***

- When the store clerk's back is turned, Connie, aged 23, slides an expensive scarf into her purse and walks out of the store. Apprehended by store detectives on the sidewalk, she complains that she's tired of paying exorbitant prices for everything.
- Nancy, aged 14, steals a digital watch from a department store display. Her only excuse, when she's caught, is that her friends dared her to do it.

***Case 4***

- Jim, aged 39, makes obscene phone calls to women in his neighborhood. He enjoys their confused and helpless reaction and likes to give them a good scare.
- Andy, aged 15, makes an obscene phone call to one of his teachers. He wants to see how she'll react.



Should juveniles and adults receive the same punishment for the same crime? [CRF Photos]

## Different Worlds

Under current federal and state law, from the moment a juvenile first comes to the attention of the police, his or her treatment differs greatly from that which an adult would receive. Though the specifics of treatment vary from state to state, the major differences are noted in the chart below. Try to explain some of these differences in light of the early twentieth century reforms. In your opinion, are these differences justified?

| *In the adult system:* | *In the juvenile system:* |
|---|---|
| A person can be legally arrested if he or she is suspected of committing a crime. | A juvenile can be legally detained if he or she is suspected of committing a crime or a delinquent act. |
| The state files formal criminal charges in the form of an indictment or information. | The state files a petition with the juvenile court. |
| A person may be released on bail or his or her own recognizance or may be held in jail until trial. | A juvenile may be released into the custody of his or her parents; may be held in custody until an official hearing (time limit set by statute); or may be placed on probation without an official hearing. |
| Decisions are made by judges and/or juries. | Decisions are made by hearing officers, commissioners or juvenile judges. |
| A trial determines whether or not an accused person is, beyond reasonable doubt, guilty of a specific crime. | An *adjudicatory* hearing determines the truth or falsity of the petition beyond a reasonable doubt. A *dispostional* hearing determines if the juvenile is in need of state supervision or care. |
| A convicted person may be placed on probation, fined, and/or sentenced to a specified length of confinement in a jail or prison. | Juveniles judged in need of care are made wards of the court. They may be placed on probation, removed from their family and placed in a group or individual foster home, fined and/or committed to an unspecified length of confinement in a reform school, state institution or camp. |
| Proceedings and records are public. | Proceedings and records are kept private. |

## What is Delinquency?

Legal professionals do not agree about the basis of juvenile delinquency. The three most common definitions are:

a. A delinquent is a juvenile who *commits a delinquent act*, whether or not that act is ever discovered.

b. A delinquent is a juvenile who is *detained by police* for allegedly committing a delinquent act.

c. A delinquent is a juvenile who is *judged delinquent* in a juvenile court.

The definition of delinquency and the use of the term varies greatly from state to state. Specific acts and behaviors are often classified as delinquent for two general reasons. Such actions either a) would be termed criminal if committed by an adult, or b) are thought harmful to young people because they might be dangerous or lead to criminal behavior. (The latter are often called "status" offenses because they only apply to those who have the status of juveniles.) California's law, for example, describes a wayward young person as one who "persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardians, custodians or school authorities, or who is beyond the control of such persons, who is habitually truant . . . or who . . . is in danger of leading an idle, dissolute, lewd or immoral life." In other states, these behaviors may be considered delinquent.

### The System

Recent statistics indicate that about 2% of all Americans under age 17 pass through the juvenile justice system each year. Nationwide, comparatively few of these young people are accused of violent crimes (murder, rape, robbery and aggravated assault). In fact, less than 6% of delinquents commit acts which constitute violent crimes. The vast majority are detained for crimes against property, misdemeanors or status offenses. 10% get involved in the system because they are deprived, abused or neglected juveniles.

Current debate about juvenile justice often focuses on the breadth of the courts' jurisdiction. In the early 20th century, when the system was developed, no alternative social service agencies existed to help deprived or neglected children. Now, however, such agencies flourish in most large cities. Many argue that the court should turn its control of children suffering parental abuse or neglect over to welfare agencies, private charities and counseling centers.

Still others find the system unfair because it processes all juveniles in the same manner no matter what they've done. An adult who commits a civil offense or a misdemeanor isn't likely to end up in jail, nor is one who stays out past midnight. But juveniles detained for curfew violations or parental neglect may be processed in essentially the same fashion as those detained for crimes of violence. The end result of the process can be different in each case: the curfew violator might be released on probation, the neglected child might be sent to a foster home, and the violent offender could be committed to a maximum-security institution. Nonetheless, all three juveniles might be processed in the same detention center, tried under the same conditions and according to the same criteria by the same hearing officer.

### *For Discussion*

1. Which definition of delinquency best fits your concept of a juvenile delinquent? Why?
2. Consider the following facts: young people in juvenile institutions have committed more numerous and more serious delinquent acts than "normal," "non-delinquent" young people. Yet, roughly 10–20% of those locked up have committed fewer delinquent acts than those on the outside. Does this finding affect your decision about the definition of a juvenile delinquent? Why?

Many delinquent acts take place in our nation's high schools. [Ezra K. Davidson]

## Delinquency and the System/ Two Activities

What is delinquency? What kinds of people should be processed through the juvenile justice system? To help clarify your opinions about these issues, complete the following activities.

### Activity 1: Are You Now or Have You Ever Been?

In many states, the actions described in the following items are cause for a judgment of delinquency when committed by persons 18 and under (even if only committed once). Form small groups and complete the following steps.

*Step 1*

Read the list carefully. As a group discuss the items using these questions.

- Which are actually crimes?
- Of the remainder, which do you think are harmful to young people? Why?
- Which of the actions on the list should *not*, in your opinion, be classified as delinquent?

a. Disobeying your parents
b. Cutting school
c. Running away from home (even for a short while)
d. Taking a car without the owner's knowledge or permission
e. Driving recklessly or too fast
f. Buying or drinking beer, wine or liquor
g. Using or selling marijuana or drugs
h. Smoking cigarettes at school or in public
i. Having sexual relations
j. Deliberately damaging property
k. Being involved in a fight
l. Taking something which did not belong to you
m. Staying out past midnight

*Step 2*

These items have been used as a basis for "self-report" surveys in which young people are asked to tell whether they have ever committed any of these acts. These surveys were conducted with strict confidentiality. As a group consider the results taken from two different surveys administered to high school students in the midwest (Short and Nye, 1958) and the northeast (Thornton and James, 1977).

Percent of students who admitted committing the offense at least once.

| | Midwest | Northeast |
|---|---|---|
| a. Disobeyed parents | 27.6 | N/A |
| b. Cut school | 47.3 | 2.5 |
| c. Ran away | 11.3 | 9.5 |
| d. Took car | 8.3 | 16.8 |
| e. Reckless driving | 35.3 | N/A |
| f. Alcohol use | 65.2 | 70.8 |
| g. Drug use | N/A | 55.5 |
| h. Smoking cigarettes | N/A | N/A |
| i. Sexual relations | 25.6 | N/A |
| j. Property damage | 41.2 | 0.8 |
| k. Fighting | 59.7 | 41.4 |
| l. Taken something | 49.3 | 44.8 |
| m. Stayed out at night | N/A | N/A |

**Debriefing Questions**

1. If such a survey were conducted at your school, how would the results compare to the surveys reported above?
2. Do you think this method of getting information about delinquency, called "self-reporting," reveals an accurate picture of the number of young people committing delinquent acts? Why or why not?
3. These two surveys were conducted nearly 20 years apart. How do the responses compare? How do you account for the differences?

## ▷ Activity 2: Who Should Be In the System?

What kind of young people do you think should be processed through the juvenile justice system? Complete the following worksheet which asks you to decide what government agency should responsible for juveniles in certain situations. Compare your answers with those of other students in your class.

| Which, if any, government agency should handle cases of juveniles who: | State or local social service agencies | Juvenile courts | Adult criminal courts | No government institution (Should be handled privately/Should not be illegal) |
|---|---|---|---|---|
| a. Are physically neglected or abused (poorly fed or clothed, beaten, sexually molested, denied vital medical treatment) by their parents? | | | | |
| b. Are exposed to or taught illegal behavior (drug abuse, criminal acts) by their parents? | | | | |
| c. Have parents who can't afford to take care of them? | | | | |
| d. Have parents who live according to moral standards different from those of the general community (i.e., unmarried or homosexual parents, those with unusual religious beliefs)? | | | | |
| e. Habitually exhibit wayward or incorrigible behavior? | | | | |
| f. Habitually run away from home? | | | | |
| g. Commit status offenses (curfew violations, underage drinking or driving)? | | | | |
| h. Commit misdemeanors (loitering, joy-riding, making obscene phone calls)? | | | | |
| i. Abuse intoxicating substances or commit "victimless" crimes (prostitution, pornography)? | | | | |
| j. Shoplift? | | | | |
| k. Commit major theft and other property crime? | | | | |
| l. Commit violent crimes (crimes against persons)? | | | | |

## ■ The Rights of Juveniles

*Parens patriae*, "individualized treatment," and "the best interests of the child" are the cornerstones of our juvenile justice system. Children are delinquents, not criminals; they do not have trials, they have hearings; they are not imprisoned, they are detained. This special treatment is often necessary and beneficial. It can also raise serious constitutional questions. What provisions of the Constitution and Bill of Rights apply to juveniles? Which do not? These problems have faced the Supreme Court many times. Consider the following landmark case.

### Sorry, Wrong Number

On the evening of June 8, 1964, Mr. and Mrs. Gault of Maricopa County, Arizona, returned from work and couldn't find their son, Gerry. He wasn't at home where he was supposed to be. He wasn't at school. He wasn't with any of his friends. After a frantic search, they finally managed to locate their son at the Children's Detention Home. Gerry had been arrested that afternoon for allegedly making an obscene phone call to a neighbor.

The Gaults rushed to the home to collect their son, but he was not released. Instead, the family was told there'd be a hearing about Gerry's case the next day. On June 9th, an Arizona probation officer filed a petition with the court which stated that Gerry was a delinquent minor, but which contained no details about his alleged crime. Gerry and his parents were not told he could consult an attorney or refuse to answer questions. The offended neighbor wasn't even present at the hearing. After it was over, Gerry was sent back to the Detention Home.

When Gerry was released a few days later, his mother received a notice from the probation officer announcing another hearing on June 15th. Again, the neighbor was absent. Again, no records were kept. When it was over, the juvenile court judge committed Gerald Gault as a juvenile delinquent to the Arizona State Industrial School "for the period of his minority." In other words, Gerry received a six-year sentence. The maximum adult punishment for his alleged crime was a $50 fine and two months in jail.

The Gaults immediately filed a petition of *habeas corpus* on Gerry's behalf, arguing that their son had been denied his rights under due process of law. The Arizona state courts, however, denied these claims. Because the adult and juvenile systems had different aims, explained the Arizona Supreme Court, they required different definitions of due process. If the state applied strict adult regulations to juvenile cases, it could not provide the individualized justice which was the heart of the juvenile system. Though Gerry's treatment was not in accordance with adult due process requirements, the boy had not been treated differently from other juveniles. Arizona agencies had acted in accordance with their normal procedures and the decision to confine the boy was, therefore, upheld.

Unconvinced, the Gaults appealed to the U.S. Supreme Court. In 1967, the high court responded, shaking American juvenile justice to its foundations. A majority of five Justices reversed the Arizona Supreme Court ruling and granted the Gaults' *habeas corpus* petition.

### *In Re Gault* (387 U.S. 1)

Prior to *Gault*, U.S. courts had upheld the idea that young people had a right "not to liberty, but to custody." In other words, a child's right to protection outweighed his or her right to independence. In the *Gault* decision, the Supreme Court stated that, on the contrary, just like adults, juveniles had a vested interest in not getting locked up. It made no difference whether the jail was called a reform school, a detention home, or a prison. Any juvenile proceeding which could lead to confinement must follow minimum standards of fairness and due process.

The majority opinion explicitly stated what some of these standards were.

1. *A defendant must be informed of the charges* against him or her; notice of the charges is an essential element of a fair trial. Until he found himself in a hearing room, neither Gerry nor his parents knew why he'd been accused. The official petition, which the Gaults were not shown prior to the hearing, said only that Gerry was "in need of the protection of this Honorable Court." The Supreme Court was not satisfied with this general charge. Detained juveniles and their parents must be told specifically what conduct was under question and why a hearing was being held. Moreover, this information had to be provided well in advance of the hearing so the accused could prepare a response.
2. *All young people subject to confinement had a right to the services and advice of an attorney* and must be informed of their rights. The state must provide attorneys for those too poor to afford legal fees. In theory, the hearing and probation officers were supposed to be looking out for the young person's best interest, but since confinement was so much like punishment, the

Court decided that young people needed personal advocates. Attorneys would also help young people better understand what was happening to them in the juvenile justice process.

3. Under oath during the *habeas corpus* proceedings, Gerry's hearing officer testified that, during the June 9th and June 15th hearings, the boy had confessed to making the offensive phone call. Also under oath, Gerry's mother, who was present at both hearings, denied this claim. She asserted that her son only confessed to dialing the phone, but that another boy had done all the talking. The Supreme Court announced that this conflicting testimony was irrelevant because neither Gerry nor his family had been informed of the boy's right to remain silent. Juveniles, too, were protected from self-incrimination by the Constitution. *Officers must inform a young person of his or her right to remain silent before questioning.* In addition, if a young person refuses to answer questions, that refusal cannot be used as an indication of guilt.

4. The neighbor who accused Gerry Gault never appeared at a hearing to confirm her accusation or explain why she blamed Gerry for the phone call. The Supreme Court decided that was invalid. Confronting and questioning witnesses was an important part of determining the validity of evidence. If a witness' testimony was to be used in determining the facts of a case, that witness must appear in court. Just like adults, *juveniles had the right to cross-examine their accusers.*

Though it marked the first big step in asserting juveniles' rights, the *Gault* decision was also significant because of the rights it did not guarantee. The Court refused to apply its due process requirements to cases where the detained juvenile was released on probation, sent to a foster home or in other ways "set free." Nor did it insist that juveniles receive all the constitutional protections available to adults.

The Court, for example, did not consider whether hearsay evidence was admissible in cases like Gerry's, where the juvenile was detained for a specific offense and the hearing officer had to determine whether or not the young person had actually committed that offense. It did not rule on cases where the juvenile was picked up on more general grounds, like being beyond parental control or keeping bad company. To decide whether such complaints were valid, a juvenile judge might have to rely on hearsay evidence and *Gault* didn't necessarily prohibit this practice. *Gault* also left questions about other constitutional issues, such as the exclusionary rule and the rights to speedy, public and jury trials, unanswered.

### *For Discussion*

1. Why do you think Gerry's hearing officer decided that the 15-year-old was delinquent and in need of the state's protection? Do you think Gerry could be defined as delinquent? Why or why not?
2. What rights did the Supreme Court guarantee juveniles in the Gault decision? What rights were not guaranteed?
3. It has been said that the *In Re Gault* decision "shook the American juvenile justice system to its foundations." How did it contradict the philosophy behind our juvenile justice system?

## ▶ The Court Decides/ An Activity

In the years since Gerry Gault's release, the Supreme Court has been asked to answer some of the questions raised by the *Gault* decision. The facts and arguments of three of these important cases are noted below. If you were a Supreme Court Justice, what decisions would you reach?

**Procedures**

1. Form "courts" consisting of an odd number of students (5 or 7 is preferable).
2. Appoint one member to take the role of Chief Justice. He or she will lead the Court's discussions.
3. Select one of the following cases, making sure that each case is heard by at least one Court.
4. Carefully read and discuss the facts and arguments of your case.
5. The Chief Justice of each Court should poll the justices one at a time to give and/or support an opinion on the issues of the case (majority wins).
6. Select a representative to report your decision and the reasons behind it to the class as a whole. If some members of the group disagree with the decision, select a second representative to report the "minority" opinion.

### "A Standard of Proof"
### *In the Matter of Samuel Winship*
### 397 U.S. 358

An adult can only be convicted of a crime if his or her guilt is proved "beyond a reasonable doubt." In non-criminal cases, the standard of proof is different. A civil plaintiff, for instance, usually only has to prove that a "preponderance of the evidence" supports his or her claim. Since it considered juvenile proceedings to be technically civil, the New York State legislature passed a law stating that delinquency did *not* have to be proved "beyond a reasonable doubt." Juvenile courts could declare a young person delinquent based on a "preponderance of the evidence."

Samuel Winship was 12 years old when brought before a New York juvenile court for allegedly stealing $112 from a woman's purse. Based on a preponderance of the evidence, the judge found Samuel delinquent and committed him to a training school until he reached age 18. After state courts upheld the commitment Samuel's case was appealed to the Supreme Court.

On appeal, Winship's attorneys argued that:

- Winship's commitment was, in effect, punishment for stealing the $112.
- Winship was being punished unfairly because his guilt had not been proved "beyond a reasonable doubt."
- The reasonable doubt standard was an integral part of the due process guaranteed by the 14th Amendment.
- By basing its decision on only a "preponderance of the evidence," the State of New York violated Winship's 14th Amendment rights.

Attorneys for the state, on appeal, claimed that:

- Winship's commitment was not punishment and no determination about his guilt had been made. Such a determination was beyond the scope and would not serve the purposes of the juvenile justice system.
- If forced to apply the stricter "reasonable doubt" standard, the informality and personalized justice which were the juvenile courts' reason for existence would be threatened.
- The "reasonable doubt" standard was a common law precedent, not expressly required by the Constitution or its 14th Amendment.
- Each state legislature had the right to determine the standard of proof most appropriate to its own citizens.

*Issue for Decision*

Does due process as guaranteed by the Constitution and its 14th Amendment require that juvenile courts apply the "reasonable doubt" standard?

### "Trial By Jury"
### *In Re Barbara Burrus, et al.*

Barbara Burrus and several of her friends, ranging in ages from 11 to 15, were displeased with decisions made by their principal and school board in Hyde County, North Carolina. They organized and carried out a series of demonstrations, were arrested, and turned over to the juvenile authorities. If the offenders had been adults, their activities would, at most, have resulted in misdemeanor charges.

Attorneys for the young people requested that: 1) their juveniles' hearings be opened to the general public, and 2) they be given jury trials. The hearing officer denied the request for trial by jury and, in general, excluded the general public from the hearing. After the hearings, he declared the young people juvenile delinquents and committed each to an institution until they reached the age of majority. He then suspended all these commitments and placed all the offenders on probation.

An appeal to the North Carolina Supreme Court successfully reversed the commitments, but that court upheld the delinquency findings and ruled that a juvenile was not guaranteed a trial by jury under the Constitution. Lawyers for Burrus and her friends appealed the case to the U.S. Supreme Court.

On appeal, Burrus' attorneys argued that:

- The findings of delinquency were, in effect, convictions.
- The 6th Amendment guarantees Americans a public trial by an impartial jury prior to conviction for a criminal offense.
- Barbara and her friends experienced precisely the kind of treatment the 6th Amendment was meant to prohibit. The young people were convicted and sentenced for activities which were, at heart, political. Since their case was not exposed to public scrutiny, not tried according to the values of community members, misuse of the judicial process for political ends was a likely occurrence.

Opposing attorneys, on appeal, argued that:

- The findings of delinquency were not convictions and that at no point in the proceedings were the young people accused of crimes. Such accusations were not in keeping with the spirit of juvenile justice.
- The 6th Amendment mandated a jury trial only in criminal prosecutions. Juvenile proceedings were not criminal prosecutions. Trial by jury was not, therefore, required by the Constitution.
- Requiring that states give juveniles jury trials would turn such proceedings into an adversary process. This would result in delays and formalities which contradicted the juvenile system's idealistic goals.
- Privacy in juvenile proceedings protected the reputations of the young people involved.
- The issue of whether or not to give young people public or jury trials was, in any case, best left to be resolved by the individual states.

*Issue for Decision*

Under the 6th Amendment of the Constitution, are juveniles entitled to a jury trial in juvenile court proceedings?

Teenage defendant Peter Bianco awaits sentence in his trial as an adult. [UPI]

### "Trial By Jury"

### *McKeiver v. Pennsylvania*

McKeiver was a 15-year-old who'd never been in trouble before when he joined a gang of about 25 young friends as they chased three younger teenagers down the street. When the gang caught up with their victims, they threatened the youngsters and took 25¢ from one boy. McKeiver and a 16-year-old friend were caught and charged with the theft and assault. Both boys requested to have their cases tried by a jury and, in each instance, the request was denied. At their juvenile hearings, both teenagers were found to be delinquent. McKeiver was put on probation; his friend was committed to an institution. Untimately, the case was appealed to the Supreme Court.

On appeal, McKeiver's attorneys claimed that:

- The State of Pennsylvania had interfered with both defendants' rights under the 6th and 14th Amendments by denying them trials by jury.
- Juvenile court proceedings are so similar to criminal trials that defendants' due process rights must be protected.
- Trial by jury is one of the most fundamental of all American due process rights.
- If accused of McKeiver's alleged offense, an adult would have been given a jury trial. It was unfair to discriminate against McKeiver and his friend merely on the basis of their ages.

Attorneys for the State of Pennsylvania, on appeal, argued that:

- The Constitution only mandates trials by jury in criminal cases.
- No matter how many similar features the two processes share, a juvenile proceeding is not a criminal prosecution. Both in philosophy and in practice, a juvenile hearing is, in many ways, different from a criminal prosecution.
- A judge or hearing officer is just as competent to determine facts as a jury would be.
- Giving juveniles jury trials would destroy the system's design as a protective mechanism for handling young people in trouble. Government studies had recommended against using jury trials for juveniles.
- Each state should be allowed to decide whether or not it wished to extend the right to a jury trial to the young people in its own jurisdiction.

*Issue for Decision:*

Under the 6th and 14th Amendments to the Constitution, are juveniles entitled to a jury trial in juvenile court?

**Debriefing Questions**

1. What decisions did each student court reach? Compare your decisions with those made by the U.S. Supreme Court, noted in the answer section.
2. What are some of the advantages of applying the "reasonable doubt" standard of proof in juvenile cases? What are some of the disadvantages?
3. How might making juvenile hearings public help society? Help accused individuals? Why might this be harmful to society?
4. If you were accused of an unlawful act, would you prefer a jury trial or a delinquency hearing? Why? Would you want proceedings at your trial made public?
5. If juveniles were given jury trials, who should serve on the jury? The juvenile's peers? Adults? A mixture of both groups? Why?

## A Question of Incarceration

Once a determination of delinquency is made, a juvenile commissioner or judge must decide what is to be done with the young offender. As with adult court judges, he or she has a number of options. The judge tries to individualize the disposition to best rehabilitate a particular delinquent youth. One of the options available is incarceration.

### Lock-up

Juveniles who are found to be delinquent may be incarcerated in a variety of settings. Less serious cases are often placed in minimum security facilities. These include state or county camps, ranches, training schools and supervised residences. More serious offenders and severely disturbed juveniles are often placed in state or county maximum security institutions. Sometimes called closed or secure facilities, doors and windows are locked, daily routines are strictly monitored, and high fences often surround the grounds. In some jurisdictions, juveniles may even find themselves placed in a juvenile wing of adult city or county jail. There, they may have contact, although limited, with adults awaiting trial on criminal charges or convicts serving sentences of less than one year.

### A Tragedy in Boise

There are two reasons young people in Boise, Idaho, can end up in the juvenile section of the Ada County Jail. They can be sent over from juvenile detention center because they're too violent or difficult to handle; or they can be picked up for a minor offense, and be sent to jail to be taught a lesson. In May, 1982, Christopher Peterman, aged 17, found himself in jail for the latter reason: he'd failed to pay $73 in traffic tickets. On May 31st, while in his cell, Christopher was subjected to a 4 1/2 hour beating, during which five other inmates, all juveniles, burned, gouged, and kicked him. That afternoon, he was found in the exercise yard. Later, he died of his injuries.

Jail authorities told the teenager's family and community that they couldn't hear what was going on in Christopher's cell because the monitoring device was broken. The county sheriff insisted that the incident was rare and isolated.

Other teenagers disputed the sheriff's claims. Rick Yellen, a 17-year-old, spent 30 days in the juvenile section of county jail. He'd been found in possession of tobacco and failed to pay a fine. While in jail, Rick was beaten for two hours by three of the same inmates who later killed Christopher. Authorities discovered the beating and took Rick to a local hospital for treatment. When he was released, however, he was returned to the same cell.

Peterman's case is a horror story about what can happen when violent and non-violent juveniles are locked up together. Not surprisingly, the results of incarcerating non-violent juveniles with violent adults can be equally as tragic. Rape is not an uncommon occurrence. The suicide rate of young people in adult jail is *seven times* greater than those incarcerated with other juveniles. In adult institutions, young people can receive the same rough treatment meted out to adult inmates. Even if a juvenile emerges from the experience physically whole, he or she is likely to carry psychological or emotional scars for a long time.

### Secure Institutions

Each year, police log between 80,000 and 90,000 juvenile arrests for four violent crimes: murder, rape, robbery and aggravated assault. Though a small proportion of the young people who pass through the system, this number is large enough to warrant attention. Perhaps the most controversial issue facing juvenile justice today is what to do with young and violent offenders.

Prior to the 1970s, the standard treatment was commitment to a state "training school," a maximum-security facility, until age 21. More lenient and therapeutic treatment replaced this practice early in the decade, but the pendulum may be again swinging back toward harsher punishment. Over the past ten years, studies have been released questioning both approaches. One suggests that all institutional treatment is doomed to failure because inside these facilities peer pressure forces juveniles to conform to delinquent behavior. Drugs are readily available and drug use is supported by peers. Peer pressure also reinforces acts of violence. Another study questioned recently released juveniles, most of whom admitted they were worse off when they left the training school than they'd been when they entered it.

On the other hand, a Harvard Law School study in 1973 concluded that young people treated in community-based programs were just as likely to commit new crimes as those released from training schools. Another study of community treatment programs in Chicago found that hard-core delinquents sent to highly-structured programs, like training schools, were less likely to commit crimes than those receiving therapeutic treatment.

What kind of treatment works best with juveniles who've committed violent crimes? Each of the correctional institutions described below takes a different approach.

### Punishment: The Rhode Island Boys Training School (RIBTS)

Before 1972, this institution housed boys who had been committed by their parents, who were awaiting a hearing, or who had been judged delinquent, wayward, deprived or neglected. Most of the boys were kept in cottages, but those considered disciplinary problems lived in maximum security facilities with barred windows.

The rooms in these facilities were 8' x 6' and held a bed, a toilet, and sometimes a sink. One of these facilities served meals at 7:00 am, 11:00 am, and 3:00 pm. Schooling was limited to two hours of working out math problems each day. One of these buildings, built in 1863, held two isolation cells with boarded windows which weren't wired for artificial light.

The RIBTS had two other disciplinary facilities. Boys accused of running away, fighting, assaulting guards, or homosexual behavior were sent to a solitary confinement building for up to 15 days at a time. They were only allowed out of their cells twice a week to shower. Sometimes, they were not provided with toilet paper, clothing or bed linen. One boy slit his wrists while in this facility and authorities refused to give him medical care. If all other treatment failed, boys were sent to the maximum security section of the Rhode Island adult prison where they mixed with and were treated like adult convicts.

### Behavior Modification: The Utah State Industrial School (USIS)

A large modern facility with eight dormitories, two gyms, a cafeteria and three school buildings for academic and vocational education, USIS is a minimum security institution, except for one building which houses dangerous young persons and escapees. A normal day begins with a regimented march to breakfast, then a march to the school buildings. Classes continue until 3:00 p.m., when there are supervised sports. The school holds co-ed dances and movies on weekends.

Such privileges are central to the school's training techniques. At USIS, good behavior is rewarded with additional privileges; bad behavior is punished by withdrawal of privileges. As treatment progresses, the immediate rewards of a movie or dessert are replaced with less tangible rewards. This is designed to prepare the student for coping with the real world.

### Inactivity: The Green Hill School

Green Hill is a training school run by Washington State with two maximum security units. Buildings are new and clean. Some of the inmates attend school a few hours each day, but no vocational education is offered and only minimum counseling is provided. Inmates spend most of their days in locked and guarded community rooms with nothing to do.

### Control & Treatment: Camp David Gonzales

Surrounded by a brick wall in a canyon in Los Angeles, Camp David Gonzales is geared to control and treat the most serious juvenile offenders. The camp program provides vocational and career planning, academic preparation and counseling. Wards who demonstrate good behavior are assigned in-camp and outside work assignments and jobs.

The Rhode Island Boys Training School punished its inmates, often very severely. In 1972, a federal judge ordered the school to change some of its policies and close the most offensive of its buildings. The Utah State Industrial School on the other hand, attempts to rehabilitate its inmates with positive and negative reinforcement. Some critics claim that the USIS method is ineffective because, in the real world, people are not necessarily punished for being bad or rewarded for being good; therefore, the school sets up a false environment. Children who do well inside the school, protected from the stresses and pressures of reality by a regimented lifestyle, may still fail when faced with adult decisions. However, as with the approach offered at Camp David Gonzales, USIS does make a concerted attempt at rehabilitation.

In the third example, inmates are neither punished nor treated. There's no money for, and some critics claim no interest in, providing vocational training or recreational activities for Green Hill inmates. While serving their terms, which can last four years, these violent juveniles may not learn vocational skills, but at least they're not on the street hurting others.

### *For Discussion*

1. The reformers who established the juvenile justice system believed that rehabilitation was the only acceptable reason for incarcerating young people? Do you agree? Or are there more important considerations in deciding whether or not to jail juveniles? Why?

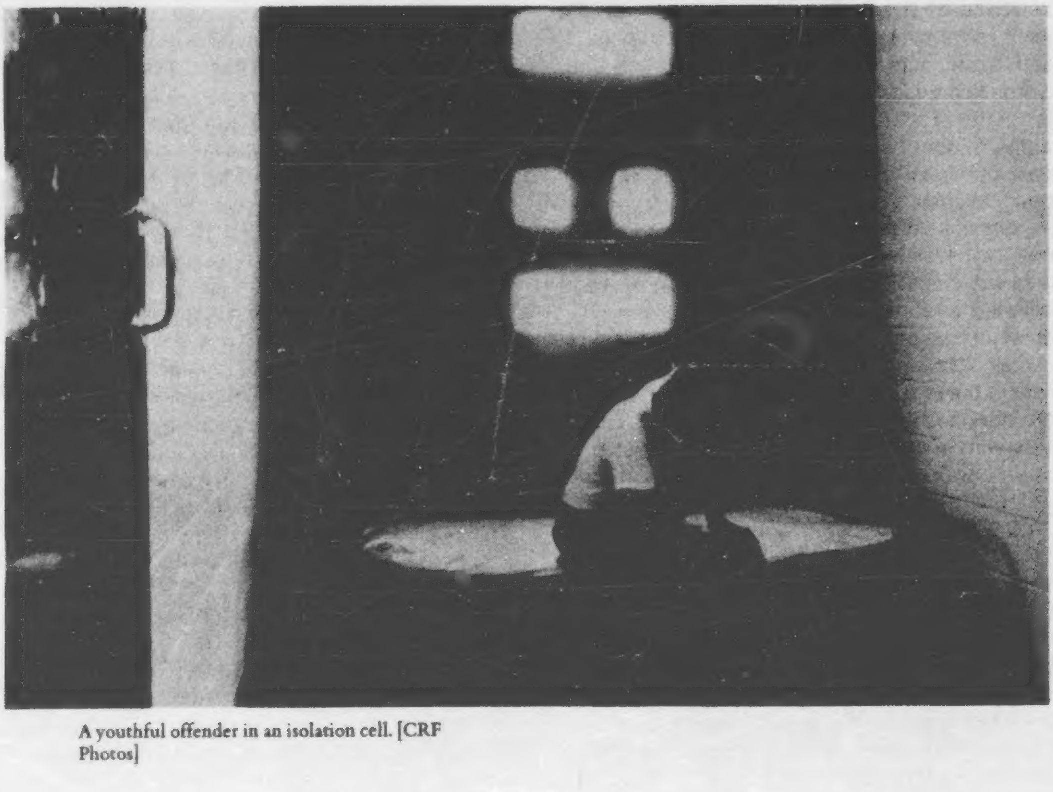
2. In the Peterman case, the city of Boise was using jail as a deterrent. Boise has a population of about 100,000; in 1981, the city issued 51,000 traffic violations. City authorities felt that jailing everyone who failed to pay a traffic fine would cut down violations. Do you think Boise's approach is reasonable? Why or why not? How else could Boise's problem with traffic violators be resolved?

3. Some national organizations have recommended that only juveniles accused of violent crimes be subject to incarceration in adult jails. Do you agree with this recommendation? Why or why not?

4. *Research the following:*

What are the maximum security facilities for juveniles like in your state? Where are they located? How many inmates does each hold? How (with what funds) are they supported? How much does care in these facilities cost per inmate?

5. If you were designing a maximum security facility for juveniles and you had an unlimited budget, what educational, counseling and training services would you provide? Why? If your budget only covered one of these services, which would you provide?



A youthful offender in an isolation cell. [CRF Photos]

## The Community Option

From its inception, the juvenile justice system has encouraged the practice of arranging community-based treatments for young people in trouble. Such programs are often more easily tailored to the needs of individual juveniles than what is available in institutions. In addition, many young people are in the system because they have trouble coping with family, friends or school. Instutionalizing these juveniles temporarily removes the source of their problems; community corrections help these young people deal with their problems head on.

Reform movements of the late 1960s, combined with revelations about tough institutional conditions, encouraged the development of new alternative treatment programs and publicized their availability. The late 1970s backlash against such programs was inevitable when juvenile hearing officers began assigning not only status offenders, but youths accused of more serious crimes, to halfway houses and diversion programs. Today, many communities have mixed attitudes about both the safety and the effectiveness of rehabilitating delinquents in non-institutional settings.

In most areas, a juvenile judge has the option of assigning a detained juvenile to the following types of programs. To some degree, each utilizes interaction with the community as a rehabilitative technique.

*Summary Probation*

Juveniles are released on their own recognizance, usually after assuring authorities that they will not misbehave in the future. If this promise is not kept, the juvenile is subject to stricter treatment and more supervision.

*Probation*

Juveniles are released under fairly strict conditions. They are usually required to report regularly to a probation officer; to stop associating with certain friends; to submit to home and/or body searches on request. If detained on a drug charge, the youth might have to take a weekly urine test. Many of the conditions attached to probation are also attached to parole. A juvenile who breaks the terms of his or her probation can be returned to court for alternative sentencing.

*Foster Care*

A juvenile is released into the custody of foster parents and is subject to their authority. Most states screen prospective foster parents, set standards about food, clothing, and other treatment foster children must receive and limit the number of children a foster family may care for at any one time. States usually pay the foster family a certain amount for each child's upkeep. Juveniles are usually committed to foster families for indefinite periods until other arrangements can be made. In practice, some children are sent to a different foster family every six to twelve months. Others prove unmanageable and return to court.

*Group Home*

A juvenile is committed for treatment at a small institution, often called a halfway house or a group home. Most of these facilities have room for under 25 young people and are run by adult "house parents" or "group leaders." Juveniles attending these institutions attend schools, hold jobs, and move about the community, but they must obey house rules. Most group homes also provide counseling.

*Diversion*

A juvenile is returned home and diverted away from the system on the condition that he or she attend a special class or program which meets after school or on Saturdays. Course contents differ widely from program to program: some teach about the legal system, the effects of substance abuse, or juvenile rights and responsibilities; others focus on vocational training; still others provide supervised recreational activities. Most juveniles diverted to these programs are only required to attend for a specific length of time, say, once a week for twelve weeks. When this requirement is met, the juvenile's treatment is complete and the court's jurisdiction ends.

### *For Discussion*

1. Which of the community options described do you think would be most effective? Why?
2. What kinds of youthful offenders might best be helped by the various community settings?
3. *Ask an Expert*

Interview a juvenile justice professional such as probation officers, referees and judges. Adult counselors from local halfway houses or diversion programs, and juveniles enrolled in such programs can also provide valuable information, often from an alternative perspective. These resource people may be willing to visit your classroom if invited or you can arrange on-site interviews. In either case, prepare your questions in advance. If more than one are contacted, you might want to compare your responses. The following list can be used as a guide.

- What kinds of juvenile offenders are sent to institutions such as juvenile hall, county camps and state training schools? Why is institutionalization the preferred treatment for these types of offenders?
- What are local institutions like? What are the living conditions? What provisions are made for recreation? For education? For vocational training or work?
- Approximately what percentage of the juveniles detained in your community are released on probation? What percent are committed to foster care?
- Are there halfway houses or group homes in your community? If so, how many are there? Are there differences between the homes? What criteria are used to determine if a juvenile should be committed to one of these homes?
- What types of diversion programs are offered in your community? Why might a court official send a juvenile to these programs?
- Are there special programs in your community to help juveniles with drug or alcohol problems?
- Which of the available programs offer counseling to juveniles? Which require counseling? Do any offer parental as well as juvenile counseling?
- Do any of the programs provide or emphasize vocational training?
- Which of the available programs most successfully treats wayward or incorrigible juveniles? Which works best for status offenders or those accused of misdemeanors or minor thefts? Are any of the community-based programs used to treat violent offenders?

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Youth taking positive action to fight the effects of vandalism by removing graffiti from walls in their community. [CRF Photos]

## The Question of Waiver

- John S. is 17 years old and has been charged with murder while attempting to rob a gas station.
- Mary B. is 16 years old and charged with prostitution. This is the fifth time she has been arrested on this charge and has run away from two foster houses and one halfway house. She has lived on and off by herself since she was 14.

What do these two offenders have in common? Both may be subject to waiver (transfer to the adult criminal courts). In certain cases, a motion may be filed with juvenile court asking that it waive its jurisdiction and transfer the matter to a regular adult court. If this motion is granted, the juvenile in question is then treated just as an adult offender would be if charged with a crime. The issue of waiving juvenile jurisdiction with certain types of young offenders has been hotly debated in recent years.

### Legal Standards for Waiver

In 1966, a year before *Gault*, the U.S. Supreme Court ruled that, before waiving jurisdiction, the juvenile court must hold a special hearing (often called a "fitness" hearing) to determine whether the young person should be tried as an adult (*Kentucky* v. *U.S.* 541, 1966). At that hearing, the accused juvenile must be represented by an attorney who has access to all relevant court files. In addition, the hearing officer must state the reasons for his or her decision in writing so they can be reviewed.

The court also issued a policy memorandum establishing guidelines for making waiver decisions. Before sending a young person through the adult courts, a hearing officer should consider:

1. How serious was the crime? Does the community need to be protected from the offender?
2. Was the crime committed in a violent, aggressive or willful manner? Was it premeditated?
3. Was it a crime against persons or against property?
4. Will the adult court prosecute the case?
5. Are the co-defendants, if any, adult? If so, should all the defendants be tried together?
6. How sophisticated and mature is the juvenile? (This is to be determined by examining his or her home life, emotional attitudes and lifestyle.)
7. What is the juvenile's prior court record and history of contact with law enforcement?
8. Can the juvenile be rehabilitated through normal juvenile procedures? If so, can the public be protected during the juvenile's treatment?

Over the past five years, the idea of waiver has received nationwide attention. Almost every state now has a procedure for treating minors as adults in certain cases. Consider some examples. In New York, all persons 16 and over, charged with criminal offenses, are processed as adults. In addition, though 14- and 15-year-olds are not waived by juvenile courts, all those found guilty of murder, attempted murder, manslaughter, first degree robbery or rape must, by law, be sent to a maximum security facility for at least five years. These commitments allow annual extensions through age 21.

In 1977, West Virginia changed its juvenile law to send 17-year-olds to adult courts if charged with a felony involving violence. The same year, Idaho reduced the age of waiver to adult court from 16 to 15. In California, all juveniles 16 or older at the time of an alleged crime may be subject to a fitness hearing if the prosecuting attorney requests one (Section 707, California Welfare and Institution Code). All juveniles 16 or older who have been accused of a violent crime are presumed *not fit* for a juvenile hearing. Their lawyers must prove some extenuating circumstances if they are to be dealt with by the juvenile courts.

Of course, not everyone agrees that treating more juveniles as adults is going to reduce the crime problem. "The problem," explains Raymond Vincent, a former juvenile judge from California, "is that putting these kids with adults means they may come out with problems that are more serious than the ones they had when they first went in."

***For Discussion***

1. Do you think waiving jurisdiction of some juvenile offenders is a good idea? Why or why not?
2. Would you add any additional guidelines for determining waiver? *Describe them.*

## ▶ A Waiver Hearing/ An Activity

You are a juvenile judge in a state which allows, but does not require, a waiver of jurisdiction in all cases where the juvenile is 15 or older and accused of a felony. Using the eight general guidelines on page 176, decide which, if any, of the young people whose cases are described below should be tried as juveniles and which should be tried as adults. In accordance with the Supreme Court ruling, write a statement of the reasons for your decisions.

**Case #1**

*Name:* Tim Sugino
*Age:* 17
*Charge:* Motor Vehicle Theft

*Circumstances:* Late one Thursday night, Sugino and a 19-year-old friend hot-wired an expensive sports car parked in the garage of an apartment complex where both worked as maintenance persons, and drove the car 120 miles to an oceanside resort. The theft was discovered approximately 48 hours later when the two young men were arrested for disorderly conduct.

*Previous Record:* Three recorded detentions by police, all within the last 18 months, two for curfew violations, one for underage drinking. Released on summary probation, without formal adjudication, in all three instances.

*Personal Background:* Junior in high school and an average student with an average attendance record. Only child, father deceased, lives with mother who works as librarian. Part-time work since age 14, fired from current job as a result of incident. One psychologist's report indicates normal profile, another suggests serious emotional disturbance as a result of father's death.

**Case #2**

*Name:* Linda Dubrensky
*Age:* 15
*Charge:* Selling Narcotics

*Circumstances:* Dubrensky's arrest resulted from police undercover operations on local community college where Dubrensky, a high school junior, was also enrolled. After selling small amounts of heroin to police agents posing as students, Dubrensky volunteered to set up a major purchase for agents. In the middle of this $100,000 transaction, both Dubrensky and her 35-year-old supplier were arrested.

*Previous Record:* Two recorded police contacts (one for curfew violation). One prior juvenile adjudication for possession of narcotics (heroin). Served three months in the County Home for Girls; six months participation in a diversion program for drug abusers.

*Personal Background:* School records indicate a moderate rate of truancy, a bright student who does not work up to potential. Family of two children, mother, step-father; mother works as a tax accountant, step-father is aerospace engineer, currently unemployed; both are members of Alcoholics Anonymous. No work record. Medical report indicates that Dubrensky is addicted to heroin.

**Case #3**

*Name:* Martin Robinson
*Age:* 16
*Charge:* Armed Robbery, First Degree Murder

*Circumstances:* Robinson and three other juveniles, two armed with handguns, robbed a local market. One owner pulled a weapon and, in the following shoot-out, the owner, a 66-year-old woman, was killed. Robinson was not armed and did not shoot the woman, but he did most of the talking during the robbery. Robinson and two others, both 14, were apprehended shortly after the incident. The fourth suspect, a 15-year-old, is still at large.

*Personal Background:* School records indicate high rate of truancy. Family of three children, mother, and grandmother. The mother works as a waitress. Minimal work record, no steady job at time of arrest. Psychiatric report indicates severe emotional disturbance.

**Case #4**

*Name:* Patricia Ann Warner
*Age:* 15
*Charge:* Breaking and Entering, Burglary

*Circumstances:* Warner and her 20-year-old boyfriend broke through the back windows of a local electronics shop after neutralizing the alarm. Police on patrol detected the crime in progress. Warner was apprehended carrying two video cassette recorders to the car; her boyfriend was picked up several blocks away after attempting to escape. In the car, police found a home computer, portable stereo players, and other equipment with an estimated total value of over $7,000.

*Previous Record:* Two prior detentions for questioning by police, one resulted when Warner and a 32-year-old female companion were picked up for selling dinnerware from the back of a van. Neither female had a bill of sale for the merchandise. Because of her youth, Warner was released without charge; her companion was cited for peddling without a license, a misdemeanor. One juvenile adjudication for marijuana possession. Spent ten weeks enrolled in a diversion program.

*Personal Background:* School records indicate high rate of truancy, poor scholastic achievement probably caused by minor learning disability. Oldest of four children, both parents present and employed at blue collar jobs. No work record. Psychological reports indicate emotional instability and suggest the possibility of child abuse in the Warner home.

### Case #5

*Name:* Danny Maestas
*Age:* 17
*Charge:* Assaulting a police officer

*Circumstances:* Police claim that when they stopped Maestas on suspicion of drunk driving, he became belligerent and verbally abusive. He took a swing at one officer, which failed to connect. Both officers had to physically subdue him. Maestas claims that the officers pulled him over for no reason. Both officers, he alleges, were verbally abusive and he admits to responding in kind when one officer made ethnic slurs. At that point, according to Maestas, the officer hit him. Realizing the possible consequences, Maestas did not resist in any way. The officer slugged him three more times, twice in the kidneys. When booked, Maestas showed signs of having been beaten. Tests revealed the boy had no alcohol in his system.

*Previous Record:* Four prior detentions by police for questioning, none resulted in any charges.

*Personal Background:* School records indicate moderate rate of truancy, average scholastic achievement. Family of four children, one of whom is away at school, another is in the army; both parents present, father employed in automobile factory. No work record.

### *Debriefing*

1. Compare your decisions with those of your classmates. Is there a general agreement about which juveniles should be tried as adults? Is there general agreement about the reasons for these decisions?
2. Based on the circumstances and nature of their alleged crime, which juveniles represent the clearest threat to the community? Which are least harmful?
3. Based on their prior records and personal backgrounds, which juveniles are most potentially harmful?
4. Of these two factors, crime and background, which was most important to your decisions?
5. Which of these juveniles do you think should be punished? Which should be rehabilitated? Which seem most, and least, likely to respond to the rehabilitative treatments available in the juvenile justice system?
6. In adult court, these cases will be tried by jury unless the defendants waive their right to a jury trial. Do you think any of these juveniles would benefit by a jury trial? Why or why not?
7. What is the youngest age at which juvenile courts should be allowed to waive their jurisdiction? Why?
8. Are there any circumstances under which juvenile courts should *not* be allowed to waive jurisdiction?

## Monty Eddings and the Death Penalty

A few years ago, 16-year-old Monty Lee Eddings, his sister and two friends decided to run away from home. Monty piled his three passengers, three handguns, and a shotgun into his older brother's car and they hit the road. Just before they reached the main highway, they stopped for gas. As they were pulling out, Monty, who was driving, dropped his cigarette and lost control of the car for a moment as he tried to find it. The car jumped a curb and slid into a shallow ditch, but Monty pulled back onto the road and sped off. A man in the coffee shop next to the gas station happened to see the incident and pointed it out to a police officer seated at a back table. Officer Crabtree swallowed his coffee and said he'd go check things out.

As they were driving down the highway, one of the kids noticed the police car approaching from behind. Monty glanced in the rearview mirror and said, "If that cop hassles me, I'll shoot him." The others laughed. The officer turned on his red light and pulled them over. Monty stuck the shotgun out the window and fired. As he drove off, he told the others he'd rather have killed a cop than be forced to go home. Tragically, Monty's shot did kill Officer Crabtree.

At the fitness hearing shortly after his arrest, Monty was certified to stand trial as an adult. He was charged with first degree murder and entered a plea of *nolo contendere* (no contest). The aggravating circumstances in the case were that the murder was "especially henious, atrocious, or cruel"; that it was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution"; and that the defendant would "constitute a continuing threat to society." The mitigating circumstances were that the defendant was very young, that he came from a broken home, was a victim of child abuse, and suffered several emotional disorders.

The trial court sentenced Monty to death. The sentence was upheld by the Oklahoma Criminal Court of Appeals which held that Monty's youth was not sufficient cause for barring the imposition of the death penalty and that the penalty had been imposed in accordance with the standards established by the Supreme Court in 1972. Monty's lawyers appealed to the Supreme Court.

### ***For Discussion***

1. Between 1972 and 1976, 35 states enacted laws to uphold the death penalty by popular referendum. There is, then, evidence of massive public support for capital punishment. However, many people balk at the idea of executing juveniles, even though this is the logical consequence of trying them as adults. Do you think courts should be allowed to apply the death penalty to juveniles? Why or why not?
2. The armed robbery and murder example used as Case #3 in the previous section is based on a real incident. In that case, the juvenile court waived jurisdiction. The 16-year-old was tried as an adult, convicted of first degree murder, and sentenced to life in an adult state prison. Many argue that a life sentence is worse than the death penalty. Do you agree? Do you think courts should be allowed to send juveniles to prison for life?

The U.S. Supreme Court struck down the death sentence for Monty Lee Eddings, 16, who was convicted for the murder of Oklahoma Trooper Larry Crabtree. [UPI]

3. In its decision on *Eddings v. Oklahoma*, handed down in early 1982, the Supreme Court voted 5 to 4 to reverse the lower court's decision in part and remand Monty's case back to the Oklahoma courts for reconsideration. The Court majority held that the lower court had not properly considered all the mitigating factors in Monty's case and that such consideration was necessary to avoid violating the 8th and 14th Amendments. The Court did *not* rule on the question of whether executing juveniles was, in and of itself, a violation of the 8th Amendment. Do you agree with the Court's decision? With its reasoning? Why or why not?

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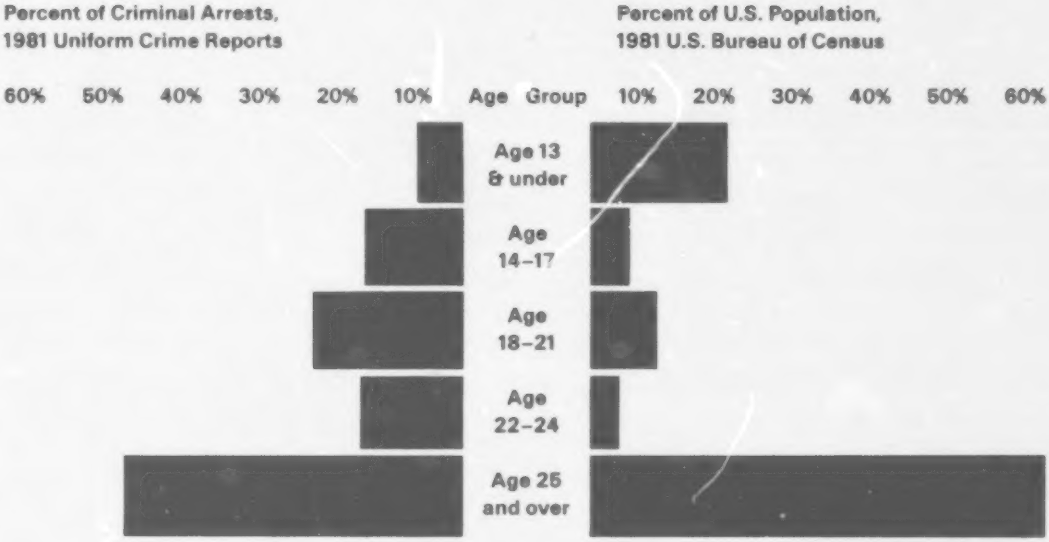
## ■ Solutions?



A glance at the above bar chart shows that juveniles between ages 14 and 17 and young adults aged 18 to 24 commit crimes widely disproportionate to their percentage of the population. Any rational approach to reducing crime in our nation must address the problem of youth crime. While some argue that the 14 to 24 age group has always been, and will always be, responsible for most crime—that's just the criminal age—others believe that much of the problem is caused by flaws in the juvenile justice system and that by correcting these flaws we'll greatly reduce American crime.

The proposals for correcting the juvenile justice system listed below have all been seriously considered, at one time or another, by professionals involved in the system.

- *Decriminalization*
  Remove status offenses and non-criminal misbehaviors from juvenile court jurisdiction. Make these offenses civil charges, misdemeanors handled by adult courts or decriminalize them altogether.
- *Alternative Conflict Resolution*
  In all cases involving a conflict in a continuing relationship between a juvenile and an adult or an adult institution, refer the matter to a neighborhood tribunal or another non-judicial forum for resolution. Examples of appropriate cases are truancy and other school-related violations, disputes between parents and their children, wayward or incorrigible behavior, matrimonial or custodial offenses, and drug or alcohol abuse problems.
- *Deinstitutionalization*
  Insist that communities identify and fund alternatives to institutional care for status offenders and neglected, abused and dependent minors. Make institutionalization of these juveniles unlawful.
- *Moratorium on Institutional Construction*
  Stop building large, remote, maximum-security juvenile institutions.
- *Fixed Sentences*
  Replace commitment for unspecified lengths with specific sentences. Eliminate juvenile parole and conditional release.
- *Specific Harm*
  Reject the concepts of "parens patriae" and "best interests of the child." Instead, make substantiated allegations of specific harm to a child or a specific criminal act necessary to justify juvenile court intervention.
- *Keep Children at Home*
  Limits orders removing children from their homes and placing them in foster care or in institutions to last-resort situations.
- *Executive Branch Control*
  Shift control of juvenile probation services and correctional facilities from the judicial to the executive branch of government, at either the state or local level.
- *Accountability*
  Make juvenile hearing officers accountable for their decisions by mandating a written statement of the rationale and supporting evidence for each official decision to restrain a juvenile's liberty.

Which of these proposals do you think would help improve the juvenile justice system? Before you answer that question, invest a little time in some research. Check the *Reader's Guide to Periodical Literature* and other library resources and read about communities which have experimented with some of these proposals. Which seem to work best? Discuss with local law enforcement personnel and juvenile court officials the prospects you think would most likely work. Which proposals do they favor? Talk with young people you know who've been involved with the system. What are their options? Only by identifying the costs, benefits and probable consequences of each proposal, can you make an informed and potentially successful choice.

STAUNTON
POLICE

[UPI]

# Solutions

It is obvious that the problem of crime in America is serious. Directly or indirectly, it affects all of us. When people are asked in opinion polls to list their concerns, "crime" often goes near the top of the list. Billions of dollars are lost every year to criminals, billions more are spent in the fight against crime. Yet crime rates hold steady or increase. So what, if anything, can be done?

One of the major difficulties with finding solutions to the problem of crime is that no one knows what factors cause it in the first place. The debate by sociologists on these issues is never ending. We begin this unit with an examination of some of the theories that have been advanced to explain the cause of crime.

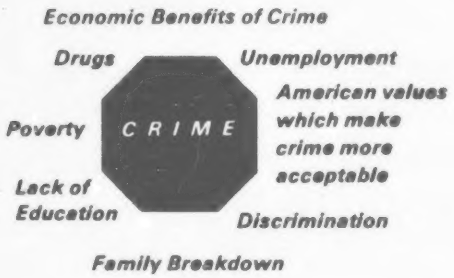
Next, we turn from the theoretical and focus on the practical. First, you will examine the role government and politics play in combating crime. It is the function of the local, state and the federal government to protect society. Each branch of government has a part to play. You have already seen how the police, prosecutors and courts deal with those accused of breaking the law. In this section, you will consider how the executive and legislative branches develop and enact policies in efforts to reduce crime.

Without the cooperation of citizens, government can do little to control or reduce crime. At a minimum, citizens should report crimes that occur to the police, cooperate with prosecutors in bringing criminals to justice, and give truthful testimony if called as witnesses in a court of law. But is this enough? What is an appropriate citizen role in the fight against crime? In this section, we explore both negative and positive ways in which citizens take a more active role in protecting themselves and their communities from crime, everything from vigilantes to neighborhood watch groups. You will also get a chance to take the role of a member of a "citizen task force" and make your own proposals for reducing crime.

The problem of crime is very complex. No less thorny are the proposed solutions. Each raises fundamental ethical, political and economic questions, questions that must be grappled with and answered if America's crime problem is ever to be solved or even marginally reduced. These are also questions that will confront you as citizens and community members for the rest of your life.

## Theories and Connections

Naturally, most people want to see crime reduced. Many people believe that to reduce crime, we must learn what causes people to commit crimes and then get rid of those forces which encourage it. The following diagram illustrates some of the factors which have been advanced as contributing to America's crime problem. Study the diagram carefully and then read the accompanying statements about the various factors.



### The Economic Benefits of Crime

Some people believe that much crime is largely the result of a criminal's cost/benefit analysis. That is, a person pondering a crime weighs the net advantage in terms of money or material gain against the chance of getting caught and the severity of punishment. Since the chance of getting caught and severity of punishment seems low to most people, there is an upward spiral in criminal behavior.

### Values Which Make Crime More Acceptable

Many people believe that Americans have certain values or beliefs which make crime more acceptable. For example, Americans are encouraged to seek "the good life" and to buy material goods. The amount of wealth and the number of possessions a person has gives him/her a certain status or position in society. Thus, people often want things they cannot afford to buy and some people may steal money or goods for this reason.

Often, people feel that what an individual wants or believes is more important than the good of the community. This value may be expressed in many ways: people taking the law into their own hands, people being more accepting of criminal behavior, and people valuing the desires of the individual more than the need for social order and proper behavior. The emphasis on the individual may sometimes make people more accepting of criminal behavior.

Some people also talk about "permissiveness" in American society. Permissiveness means being tolerant of a wide range of behavior, especially among children, and of avoiding judgment about the acceptability of others' behavior. Permissiveness can encourage people to express themselves in constructive and creative ways. However, some people believe that permissiveness may encourage some people to think that any behavior, even criminal behavior will be tolerated.

A fourth value or belief that is part of American society is the idea that violence is acceptable and even admirable. For example, we often see movies and television programs in which cowboys, sheriffs and police officers use guns and violence to combat the violence of criminals. Similarly, such programs may show people committing violent acts. Our history also includes violent battles with foreign peoples and among ourselves. This does not mean that individual Americans favor the use of violence. Rather, it means that Americans may believe violence is a normal part of life. Some people believe that this idea may make criminal behavior more acceptable.

### Unemployment

In our society, people are often judged by the work that they do and by their ability to make a living. When people are out of work or cannot get a job, they may feel worthless and frustrated. People stuck in low-status or menial jobs may also develop these feelings. In addition, they may not have enough money to live on. Some experts believe these problems may lead a person to commit a crime.

### Discrimination

In our society, some groups of people—minorities, women, young people, the elderly—have difficulty getting such things as jobs, education, credit and housing because of their race, sex or age. There are laws against discrimination, but it does occur and could contribute to crime by effectively preventing a person from getting a job or fulfilling his/her other needs in legal ways.

### Family Breakdown

The family is usually the greatest single influence on a person's life. In a family, we learn how to behave, how to treat other people, how to function as individuals and how to view ourselves. If a family is disturbed and in conflict, children may not learn what they need to learn to live in society and with themselves. In this way, a breakdown of the family can lead to psychological and social problems such as insanity or criminal behavior.

**Lack of Education**

Because we live in a complex society, formal education is needed so people learn the skills they need to live in society. Many people do not receive a proper education because some schools are inadequate, because they are too disturbed to learn, or because other circumstances in their lives prevent them from learning. These people grow up without learning the skills they need to get a job, pay their bills, and perform other basic tasks of daily life. In our society, people who cannot do these things have little hope of living a happy, comfortable life. A high percentage of people in prison have not finished school. Many experts believe that the level of a person's education is an important factor in whether or not he or she will commit a crime.

**Poverty**

In our society, people who are poor have many frustrations. They cannot enjoy the "good life." They may lack personal and job skills. For some people, poverty may mean that there is no hope for the future and they may feel they have "nothing to lose" by committing a crime.

**Drugs**

People who are addicted to drugs need a great deal of money—in some cases as much as several hundred dollars per day—to buy drugs. Usually, addicts do not make enough money at a job to pay for their drugs and they often turn to crime—theft and robbery—to get money.

***For Discussion***

1. In the diagram above, eight theories about the causes of crime have been briefly described. Which do you agree with? Why? Which would you eliminate? Why?
2. What additional factors do you think cause crime? Describe them.
3. Which of the theories do you think is the *most* significant in explaining the causes of crime? Least significant? Why?
4. White collar crimes are often committed by employed, well-educated people from good family backgrounds. Why would such people commit fraud or embezzlement?
5. *Class Activity*
   a. Divide the class into eight groups; assign one "cause" to each group.
   b. Each group should carefully reread the section assigned.
   c. Appoint a chairperson and, as a group, brainstorm three things that might be done to help eliminate it as a cause.
   d. Make a brief presentation to the rest of the class describing the group's findings. Be prepared to discuss other points of view.

Poverty has been cited as a major cause of crime. [UPI]

## ■ Can the Violent Criminal Be Stopped?

Up to now, we have been focusing on the causes of crime in general. But what causes violent crime? How does one become a violent criminal? Because of the very high costs to the victim and society as a whole, this may be the most serious crime problem in the United States today.

The violent criminal is unusual even in the world of crime. He or she (most often he) makes up a relatively small part of the criminal population in the United States. But it is this person who goes that extra step from mere stealing or assault to maiming and murder. It is the violent criminal who has caused the fear that is felt by so many Americans throughout the country today. Who is the violent criminal? What causes this type of person to harm others? Can these dangerous people be identified *before* they attack, rape, and kill? Can the violent criminal be stopped?

### Who Is The Violent Criminal?

Some criminals are violent because they suffer from brain damage. These criminals can suddenly explode in a fit of rage. Many things can set them off including alcohol and drugs.

Generally, violent criminals who are not suffering from brain damage are usually males between the ages of 15 and 24. They tend to be loners who are resentful and often depressed. Frequently they feel helpless to do anything about their dismal lives.

During the 1960's, a new factor came to the attention of the criminologists. This was the influence of television. In 1972, the U.S. Surgeon General, the highest medical officer in the federal government, announced that "televised violence, indeed, does have an adverse effect on certain members of our society." In the years that followed a number of scientific studies have backed up the words of the Surgeon General.

One study involving television violence was conducted by Monroe M. Lefkowitz and his associates from the New York State Department of Mental Hygiene. This study traced the television viewing habits and aggressiveness of a certain number of youngsters over a ten-year period of time. Lefkowitz found first that boys watch more violent television shows than girls. He also discovered that the more a boy preferred violence on TV as a child, the more violent he was as a young adult. Lefkowitz concluded that violence on television could serve as a stimulant which was at least "in part responsible for the ever increasing role of violent behavior witnessed across the nation."

An increasing number of scientists and criminologists are turning to the human brain as the key to understanding criminal and violent behavior. As stated before, some violent criminals suffer from brain damage. But how many? Four researchers from the Yale Child Study Center studied a group of violent juvenie delinquents and reported in 1979 that a significant number of them suffered head injuries in early life. The Yale researchers further found that 75% of the violent young offenders they studied suffered from some form of maltreatment as children. The researchers believe that damage to the central nervous system might prevent control over certain nerve impulses. In effect, many of the violent delinquents in the Yale study may be literally unable to control their violent acts. This is a new area of research, and experts are far from establishing a definite percentage of violent delinquents and adult criminals who are the prisoners of their own damaged brains. But, undoubtedly more of these people are responsible for violent crime than previously thought. If such individuals can be identified, drugs and other forms of medical treatment might begin to eliminate one cause for violent behavior.

### The Violent Criminal and the Family

Probably the majority of scientific researchers today believe that criminal violence is due to a complex interaction of inherited and learned factors. As a result, more interest is now being focused on the families and early childhood upbringing of violent criminals.

For many years, family violence was "off limits" to crime experts. It was felt that what happened in the home was nobody's business but that of the family. But this attitude is changing because of growing evidence that the family and the home setting is the place where violent criminals most often are born.

Murray A. Stauss, a sociologist, assembled much evidence of violence in the home in his 1979 book, *Behind Closed Doors: A Survey of Family Violence in America*. At the time his book was published Strauss was quoted as saying that from simple slapping all the way to murder, "the most dángerous place is home."

Strauss discovered that violence in the family occurs among all racial groups and economic classes. But he found that the highest level of violence takes place in blue collar families and in the families of poor minority persons living in big cities. Also, high violence levels tend to exist in families with 4-6 children or where the husband is unemployed. Many crime experts believe that a large number of violent criminals come from families where everyday violence is a common thing.

Much research has show that physically holding, caressing, and carrying infants is important to the normal mental health and social development of humans. But, what happens when this does not occur? For example, what happens when a baby that is not wanted by the mother is fed and changed but not really loved? According to some experts, the lack of touching and affection in infancy and early childhood could cause a teenager or young adult to crave stimulation. This need to be stimulated might be satisfied at this stage of life by such destructive things as drugs, alcohol, casual sex, or violence.

**Can The Violent Criminal Be Stopped?**

Because violence in individuals seems to be so complex, few experts are willing to claim that they can predict with reasonable certainty whether or not a particular individual is capable of committing a violent act. Sander J. Breiner, a psychologist from Michigan State University, declared a few years ago in a professional journal that "it is impossible to predict who will be violent."

The only way of identifying a violent criminal is to capture him or her after the act of violence. Even then, the violent criminal must be proved guilty "beyond a reasonable doubt" in a court of law. Following conviction, the violent criminal can be imprisoned or even executed. But, at the moment that a violent criminal is locked up or dies at the hands of a state executioner, another potentially violent criminal is probably being born.

Some crime experts have suggested that one thing that could be done to at least slow the development of potentially violent criminals in the United States is to try to eliminate the notion held by many Americans today that in some situations violence is acceptable. In the words of mental health expert Monroe M. Lefkowitz, we need "to deglorify violence." This might involve such things as reducing the level of violence on television and in the movies, reversing the growth of gun ownership, ending the practice of corporal punishment in the schools, and getting rid of the death penalty which attempts to end violence with more violence. However, all these things are deeply rooted in the history and culture of this country.

**The Crime Family**

Last year the *Los Angeles Times* reported on a Pasadena, California, family that included three generations of lawbreakers. The first generation parents of this family had fourteen children, nearly all of whom became involved with drugs and crime during the 1970's. As these second generation children grew to adulthood they, along with their parents, were arrested over 150 times, according to Pasadena police, for a wide variety of crimes including burglary, robbery, assault, and attempted murder.

As the second generation began to have children of their own, the pattern of crime continued. It was normal for family members to regularly be arrested and jailed.

In 1981, two cousins, both boys ages 8 and 9, from the third generation of this "crime family" were picked up by the police for shoplifting toys at a department store. By this time the Pasadena police knew the family of these boys very well. A juvenile officer, Tom Corey, decided to do something to prevent the two cousins from growing up as criminals like their grandparents, parents, aunts and uncles. Corey decided to "break the cycle of crime" by asking the juvenile court to place the 8- and 9-year-old boys in foster homes. He stated that if this were not done, "there's a 99% chance these children are going to become criminals."

The arguments prepared by Tom Corey for placing the cousins in foster homes were unusual. Corey did *not* claim that the boys had been neglected, abused, or that they lacked supervision or even affection from their parents. Rather, Officer Corey charged that the cousins should be removed from their homes because their parents and other family members were "criminal role models" for the youngsters. According to Corey, the 8- and 9-year-old boys had seen and in some cases had actually participated with their parents in committing crimes.

Under California law, children can be removed from unfit homes by the juvenile court. But, what is an "unfit" home? Normally, it refers to a situation where a child is neglected or abused by his or her parents. However, these conditions did not exist in this case. Tom Corey admitted this to be true, but still persisted in trying to convince a juvenile court judge to take the boys away from their parents. "If we lose this case," Corey warned, "they'll grow up to be cowboys—criminals."

Lawyers representing the cousins and their parents disagreed with the arguments of the Pasadena police. One of the lawyers, Ron Marks, said he believed that if the boys were removed to foster homes "any parent with a criminal background can have his kids taken away." David Horowitz, another lawyer representing the children before he was appointed as a municipal judge, wanted to know: "Who is so all-knowing to know these children are more likely to get involved in crime? Horowitz feared that by removing the children the court would be further weakening a family already in trouble. Moreover, he speculated that the children of welfare families might be taken away from their parents next. He wondered where it would all end.

### *For Discussion*

1. Considering everything you have learned about violent criminals in this article, what do you think is the best thing that can be done today to reduce violent crime?
2. Should children of parents with criminal records be placed in foster homes? Answer this question in writing. Use information from the article above to support your points.
3. Set up a class simulation of a juvenile or family court to decide what should be done with the two boys discussed in the article above. The simulation should include the following role-players: the two boys and their parents (you might invent names for them); a team of lawyers representing the boys and their parents; a team of lawyers representing the Pasadena police; a juvenile court judge. One way to proceed is for the teams of lawyers to present arguments for and against removing the boys to foster homes. The juvenile court judge then might question the parents and the boys on the points raised by the two teams of lawyers. At the end of the hearing, the juvenile judge alone must decide what is the best thing to do. After the judge makes his or her decision, the entire class should discuss it.

## ■ Crime and the Federal Government

We Americans often look to government to solve our problems and the problem of crime is no exception. Politicians, from presidents to mayors, are elected, evaluated and sometimes replaced on the basis of how well they meet our expectations. Political campaigns often center on promises or proposals for reducing crime, yet the problem remains. What *can* government do to help solve some of America's crime problem?

In this section, we will examine some of the ways in which government operates in finding solutions to the crime problem. First, we take a look at the federal level, with a special focus on the Department of Justice and the U.S. Attorney General. Later in the section, we turn to the state level and concentrate on the legislative process of proposing and enacting laws designed to reduce crime or deal with its effects.

The Constitution explains how the United States is to be governed. It divides the power of government into three distinct parts and then carefully explains the responsibilities and prerogatives of each section. Each branch has its specific duties, but all must work together. No one branch of the government can alone control any important American concern, including the crime problem.

### The Executive Branch

Congress is responsible for making federal laws, for defining federal crimes. The President is responsible for enforcing federal laws, for controlling criminal behavior. Article II, Section 3 of the Constitution says that the President "shall take care that the laws be faithfully executed." One way that the President exercises this power is by supervising the Attorney General, the Department of Justice, and other agencies and departments.

Five investigative agencies conduct a substantial majority of the investigative work done at the Federal level: the Federal Bureau of Investigation, the Drug Enforcement Administration, the Secret Service, the Postal Inspection Service, and the Bureau of Alcohol, Tobacco, and Firearms. Other Federal agencies, including the Customs Service, the Internal Revenue Service, the Food and Drug Administration, the Immigration and Naturalization Service, the Securities and Exchange Commission, and individual executive departments also employ investigators. Investigative activities include crime detecting, evidence collecting, making arrests, presenting cases to Federal prosecutors, and conducting follow-up investigations.

Prosecuting Federal cases is the responsibility of the Department of Justice and the Office of the U.S. Attorney in each district. U.S. Attorneys are appointed by the President but generally have long-standing familiarity with the concerns of their districts.

### The Congress

Article I, Section 8 of the Constitution lists all the powers which were to be granted to the federal Congress. The final clause of that section gives Congress the power to pass any and all laws "which shall be necessary and proper for carrying into execution its powers, and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof." Congress, then, is the legislative branch, the section of government with the power to make laws, including those laws which define actions as crimes.

Over the years, Congress has passed innumerable statutes defining criminal behaviors. Some of these laws were made necessary by specific powers listed in Section 8 of the Constitution. For example, Congress is supposed to control America's postal services, mints, revenues and taxes. Therefore, Congress has passed laws forbidding actions that interfere with its responsibilities, like tampering with the mail, counterfeiting coins, smuggling, and refusing to pay taxes. Congress' war powers allow it to create crimes such as spying and espionage so people won't interfere with a war effort. Congress has used the commerce clause powers to declare interstate transportation of stolen goods or kidnapping people illegal.

The founders of this country didn't want to leave all authority in the hands of the federal government. They left the specific definition of criminal activity up to the legislative bodies of the individual states.

However, many parts of the country don't fall under the jurisdiction of a state government. The District of Columbia, federal forests, military bases, post offices, federal courts, and ships at sea or airplanes aloft are all governed by the laws passed by the federal Congress. Criminal activity in federally-governed territory is controlled by federal criminal laws.

Whether federal or state law is applied to a specific act depends both on the nature of the act and where it was committed. For example, John walks up to Sam on a street in Wichita and shoots him. Sam dies. John has committed murder and would be tried under the provisions of the Kansas State Penal Code.

Let's say Sam is a postman, making his rounds when John shoots him. In this case, John has not only committed murder as defined by Kansas state law, he's also committed the federal crime of assaulting a federal employee. If he's caught, John will be tried under state law for the murder, and under federal law for the assault.

Let's say John shoots Sam not in the street, but in the post office. Though the post office is on Kansas soil, it belongs to the federal government. Actions committed inside the post office are defined according to federal law, not Kansas state law. Therefore, if John is caught, he will be tried according to the federal murder statutes.

**The Supreme Court**

The power of the federal judiciary is outlined in Article III, Sections 1 and 2 of the Constitution. "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts the Congress may from time to time ordain and establish." The Constitution goes on to describe the kinds of cases the federal courts, including the Supreme Court, can try. Congress, then, makes the laws; the President enforces them. The task of trying people for breaking the law is left to the federal judiciary.

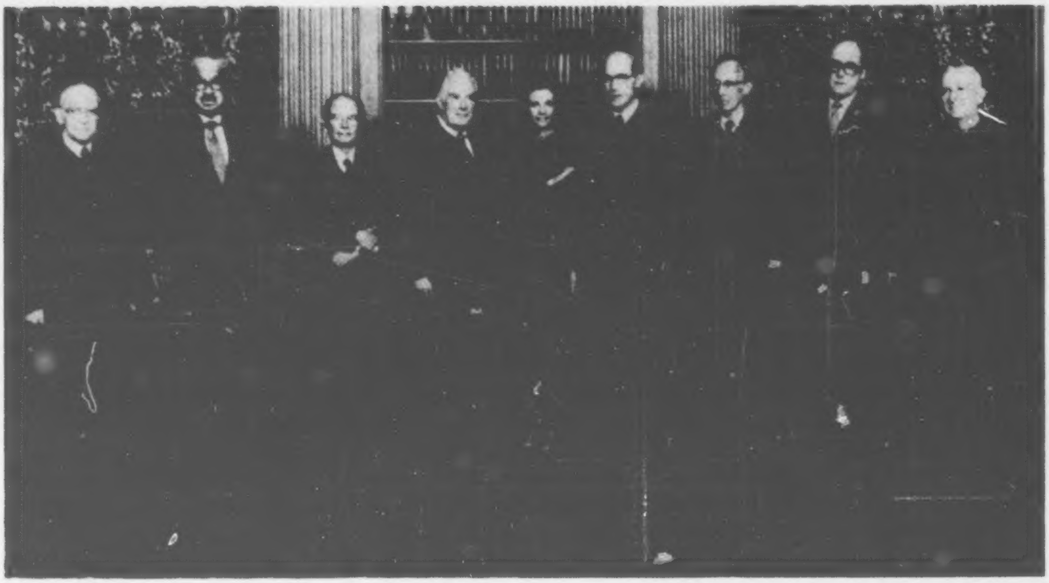
So far, we've concentrated our attention on laws written and passed by legislatures. Such laws are called *statutes*. The following criminal statute, for example, was passed by the California State Legislature in 1901.

> "Every person who maliciously, forcibly or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years."
>
> —California State Penal Code, Section 278

The wording of this law is fairly clear, but imagine that a woman takes her 14-year-old niece on a two-week trip to Hawaii against the wishes of the child's parents. The parents are furious and have the woman arrested for stealing their child, but the woman argues at her trial that she didn't take the child "with intent to detain or conceal."

The words in the statute aren't defined with enough precision to answer the woman's argument, so the judge must interpret the law. In this case, he might decide that the woman did entice the child. Though she didn't drag her niece onto the airplane, she knew that the prospect of such a vacation would be too much for the teenager to resist and she was detained fraudulently.

The judge's decision does much more than resolve this one case. The next time someone is charged with child stealing or using a vacation, clothes, money, even a better life to lure a child away from his or her parents, the prosecuting attorney can refer to this judgement and ask that the new case be decided according to the *precedent* established in earlier cases. If it's upheld by higher courts, the judge's decisions can alter the law, almost as surely as if the legislature had passed an amendment changing their statute to include psychological as well as physical force.



The 1983 Supreme Court with Chief Justice Warren Burger to the left of his newest member, Sandra O'Connor. [UPI]

***For Discussion***

1. For what part of the American criminal legal process is the legislative branch of the federal government responsible? The executive branch? The judicial branch?
2. What are two criminal situations which fall under the jurisdiction of federal rather than state law? Describe.
3. *Activity:* "Crime and the Constitution" Quizbowl

The U.S. Constitution is not a penal code, but it does make some general statements about crime, persons accused of crime, and criminal process. Obtain a copy of the Constitution, find and explain what each of the following parts has to do with crime and the criminal justice process. Write your answers on a separate sheet of paper.

*Scoring:* For each item you correctly identify you receive (2) points. If you get all 16 points possible, you are in a *bonus situation* and may try to answer the *Special Bonus Question* for an additional (5) points.

1. Article I, Section 9
2. Article II, Section 3
3. Article III, Section 2
4. Article I, Section 8
5. Amendment 4
6. Amendment 5
7. Amendment 6
8. Amendment 8

*Special Bonus Question!*

The U.S. Constitution gives a precise definition of only one crime. What crime is it? How is it defined?

(See answer section.)

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Source: U.S. Department of Justice, Bureau of Justice Statistics, March, 1982.

## An Attack on Crime/ Recommendations of the U.S. Attorney General

Shortly after President Reagan took office in 1981, his Attorney General, William French Smith, appointed a *Task Force on Violent Crime*. After studying this problem for four months, the Task Force made 64 recommendations for reducing violent crime in the U.S. James R. Thompson, the Republican Governor of Illinois and co-chairman of the Task Force, said that we should ". . . take the violent in our society and put them where they can't injure innocent citizens, and that means penitentiaries." Challenging this conclusion, Bruce Ennis from the American Civil Liberties Union stated: "The problem is, people are so concerned about violent crime that they are seeking solutions which, in fact, will not prevent violent crime measurably, and in doing so, we'll lose important rights that are the bedrock of our democracy." Below is a list of a few of the recommendations made by the Task Force on Violent Crime.

a. The courts should deny bail to defendants considered to be a danger to the community and make them stay in jail while waiting for trial.

b. Evidence obtained illegally by the police should be admitted into a trial if the police "believed in good faith" that they were acting within the law.

c. A new type of verdict should be created called "guilty but mentally ill." Persons convicted under this verdict would have to receive treatment for their mental illnesses while serving time in prison.

d. $2 billion should be spent by the federal government to build new and improve old state prisons.

e. There should be a waiting period before a gun purchaser could actually take possession of a handgun. During the waiting period a background check would be made on him or her.

f. There should be more federal funds spent to increase the effort against narcotics traffic, including the use of the military to stop illegal drug imports.

g. More federal funds should be spent to combat the violence of youth street gangs.

In the following activity, we will take a closer look at two of these proposals. Begin by reading the following excerpts from statements of William French Smith, Attorney General of the United States. They were presented on October 23, 1981 to the Senate Committee on the Judiciary, Subcommittee on Criminal Law.

*Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear before this Subcommmittee to discuss the Administration's legislative program for providing effective protection against the menace of crime in our society.*

*Of course, no sensible person supposes that we can eradicate crime; it is as old as mankind. But while we cannot expect a crime-free society, we should be able to reduce the amount of crime far below its current level, and reduce its burden as well. That is what the criminal justice system has been trying to do, but overall it has failed . . .*

*. . . The legislative initiatives we are supporting and proposing are designed to remove the inefficiencies that plague the criminal justice system and to protect our common rights as a society while preserving the fundamental rights of individuals . . .*

*. . . Every day produces yet more victims. Many of the most fundamental reforms called for have been in the process of development and refinement for years . . . our job now is to translate these various proposals into action . . .*

**Narcotics Enforcement**

*Of all crimes committed today, narcotics trafficking is without doubt the most harmful to our society.* Drugs make victims not only of those who are addicted to them, but also of the countless persons who are assaulted, robbed and burglarized by addicts in order to obtain the enormous sums of money necessary to feed the addict's habit. Narcotics trafficking frequently involves violence; it invariably breeds violence; it unquestionably causes acute misery and, in many instances, death. It also generates huge profits that can be used to avoid detection and prosecution. Finally, since narcotics primarily come from countries other than the United States, they present a menace that cannot be controlled by state and local efforts, or even by federal efforts within this country. While there is no simple answer to our enormous crime problem, control of narcotics trafficking is certainly one of the single most important steps that we can take to reduce crime.*

*What is called for to support the Administration strategy to cripple the international and domestic drug traffic is legislative action . . .*

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*The Attorney General restated this belief in a speech delivered December 17, 1982, when he called narcotics "the toughest crime problem facing America."

### Use of Herbicides to Eradicate Foreign and Domestic Marijuana Crops

The most efficient and effective way to control narcotics is by eradicating them at their source. With respect to marijuana source eradication is possible through use of herbicides such as paraquat, a product used widely to suppress weeds in connection with the production of agricultural crops. In this regard, I note that the Attorney General of Florida testified before the Task Force on Violent Crime that 61,000 pounds of paraquat were used last year on Florida's Agricultural crops. Although paraquat has been thoroughly tested and approved as safe for use as a herbicide, considerable controversy has developed regarding the potential health impact should marijuana which has been treated with herbicides be harvested and sold to consumers.

While we appreciate the health concerns surrounding herbicide use, we believe them to be speculative for two reasons. First, there is no clear evidence that herbicide-treated marijuana poses any significantly greater health hazard than non-treated marijuana. Second herbicides destroy marijuana crops within a matter of days, with the result that it is unlikely that any significant volume of treated marijuana will find its way to consumers. Moreover, we believe that the long-term health effects of marijuana use, particularly use by young people, many of whom are pre-teenage children, are such a serious health threat as to justify herbicide use as a means of curbing the national marijuana problem.

In furtherance of our goal to eradicate marijuana at its source, the Department of Justice is considering two separate legislative proposals. The first proposal would repeal the existing restriction upon assistance to foreign governments for herbicide spraying programs. The second would expressly authorize federal officials to conduct, and to assist states in conducting marijuana eradication programs through herbicide use . . .

### Exclusionary Rule

The Fourth Amendment exclusionary rule is a judicially created remedy under which any evidence and the fruits of such evidence are automatically barred from introduction at a defendant's trial if the evidence is determined by the court to have been obtained as a result of an unconstitutional search or seizure. While the rule is designed to deter unlawful searches and promote respect for the law by police officers, the effect of its application is often to engender disrespect for the law in the mind of the police and the public alike. When the rule is applied in the case of a trivial violation or mistake by the police as to whether the requirements of the law have been complied with, and results in the acquittal of a criminal guilty of a serious crime, the lack of proportionality of the sanction applied to the officer's mistake is so great that the confidence of the public in our system of justice cannot help but be eroded. The rule has a distorting effect on our system of justice where the central purpose is to ensure that the guilty are convicted and the innocent are acquitted. Rather than achieve this purpose, application of the rule signifies that a court has been diverted from the crucial question of guilt or innocence of the defendant and has turned instead to a consideration of the conduct of law enforcement officers in obtaining the very evidence that can often answer that fundamental question.

The Department testified recently before this Subcommittee in support of the recommendation of the Violent Crime Task Force that called for a legislative modification of the rule so that evidence obtained in violation of the Fourth Amendment would not be excluded from a criminal proceeding if it was obtained by an officer acting in the reasonable, good faith belief that his actions were lawful. In that testimony we noted that the reasonable, good faith approach recommended by the Task Force is largely based on the ruling by the Fifth Circuit en banc in United States v. Williams, 622 F.2d 830 (1980), cert. denied, 101 S. Ct. 946 (1981), following an exhaustive analysis of relevant Supreme Court cases.

Arguably, the interests of justice would be best served by the complete abolition of the exclusionary rule. In any event, the exclusionary rule should at least be modified. Clearly good-faith efforts by law enforcement, though found technically deficient later, should not result in a court's excluding evidence of a crime. Congress should modify the rule so that evidence would not be excluded when it was obtained with a reasonable, good-faith belief of conformity with the Fourth Amendment.

The Department has concluded that the Congress can, and indeed should, act to limit the exclusionary rule in the context of the Fourth Amendment. This conclusion is based, as was Williams on modern Supreme Court cases that hold that the sole or primary purpose of the rule today is to deter unlawful police conduct.

## An Attack on Crime/ A Class Debate

As a class, hold a debate on the proposals set forth by the Attorney General. Use these procedures as a guide.

1. Write the following propositions on the chalkboard:
   A. *Federal legislation promoting the use of herbicide to wipe out marijuana crops should be enacted;*
   B. *Federal legislation limiting the exclusionary rule should be enacted:*
2. Divide the class into eight groups designated 1–8.
3. Assign positions of the following basis:
   Groups 1 & 2: Pro/Proposition A
   Groups 3 & 4: Con/Proposition A
   Groups 5 & 6: Pro/Proposition B
   Groups 7 & 8: Con/Proposition B
4. *Preparation for Debate:* Working together, each group should:
   a. *Review and Research:* Carefully reread and discuss the statements of the Attorney General. Also, the group may wish to do some additional research using the library and other sections of this book.
   b. *Developing Arguments:* The key to a good debate strategy is to develop sound arguments on your own and to anticipate the arguments of the other side. Use the following questions to focus your discussions:
   - What is the purpose of the proposed legislation?
   - Will it accomplish that purpose? Why or why not?
   - Is the legislation necessary? Why?
   - What might happen if the legislation is enacted?
   - Which of these consequences are beneficial? Which are negative?
   - What alternatives might there be to the legislation? Are they better? Worse? Why?

   c. *Prepare a Presentation:* There are two parts to this debate presentation.
   - *A two-minute main presentation:* Use your best arguments as clearly and concisely as possible.
   - *A one-minute rebuttal:* Use this time to refute the points raised by the opposition or to strengthen and clarify your main arguments.

   Select one member of the group to prepare for the main presentation and one to prepare for the rebuttal, but work as a team in developing arguments.
5. *The Debate:* The teacher will take the role of moderator and hold the two debates. Begin with Proposition A. Select a pro-debate team from groups 1 and 2. Select a con-debate team from groups 3 and 4 and conduct the debate. Repeat the procedures for Proposition B using students from group 5 through 8. The teacher may declare winners on the basis of points raised and effectiveness of presentation.
6. *Debriefing Questions:*
   - What were the strongest arguments in favor/against Proposition A? Why?
   - What were the strongest arguments in favor/against Proposition B? Why?
   - Did the debate help you clarify your view on either of these topics? Why or why not?

## ■ The State of State

> "We must bear in mind that under our federal system of government, the states have primary authority for dealing with most crimes committed within their border, and that includes the vast majority of violent crimes."
>
> —William French Smith, U.S. Attorney General

How do state legislators tackle the crime problem? This activity explores the process by putting you in that role. The state is fictional, although you might find some similarities with the state in which you live. The legislative solutions are fictional too, but they are modeled on laws which have been proposed, hotly debated and, in some cases, enacted.

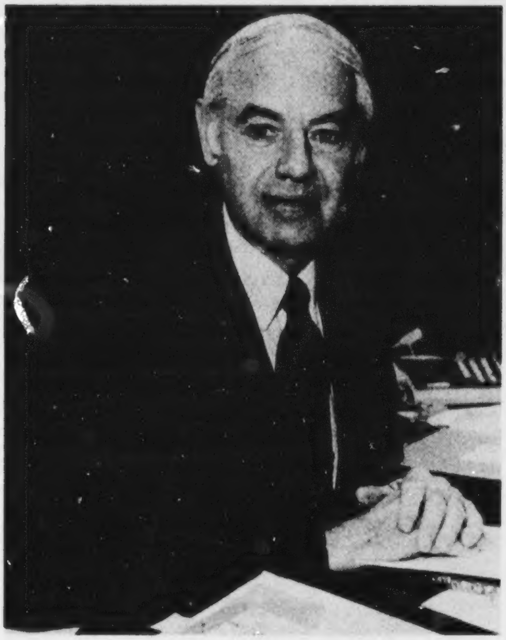
Begin by finding out what's going on in the place you have been elected by the people you serve . . .

Your state has almost four million residents. Half of these people live in rural areas on farms or in tiny villages. While some farm their own land, many work for small dairy farms or egg ranches. Others work for large agricultural corporations which raise hogs, cattle, corn or wheat. State's major industries manufacture automobiles, textiles, clothing and computer hardware. The people who work for these industries are among the two million residents who live in and around several medium-sized cities, scattered across State.

Because of the beautiful scenery and excellent recreational facilities, tourists from around the country flock to State during the summer and early fall. Because of its historical importance, State also attracts many foreign visitors. For the past few years, tourism has provided an important addition to State's weak economy.

State's crime problem reached national attention last year when the young son of an important Danish diplomat was killed, by accident, during a convenience store hold-up. But, as members of State's Assembly, you and your colleagues have been aware of a growing crime rate for several years.

The problem began in State's largest city, Commontown (population four hundred thousand) which was also the scene of the Danish tourist's murder. Within two years, the number of violent crimes and major thefts in all of State's urban areas has almost doubled. Today, the problem is also affecting rural areas, where the crime rate is rising rapidly.



William French Smith, U.S. Attorney General. [UPI]

Early in the current legislative session, one of your colleagues, Assemblyman Alan Parsons, introduced a bill designed to solve State's crime problem. Following normal procedures, Parsons presented his idea for "sweeping changes" to the Legislative Council, whose staff members re-wrote Parsons' proposal in legal language. He then filed his proposal with the Assemly's clerk, who assigned it a number, AB1715 (Assembly Bill 1715).

The next step was to assign the bill to committee for review. At this point, you and your colleagues realized what changes AB1715 would make in State's current criminal justice system or how controversial the bill would be.

**Assembly Bill 1715**

*Preamble:*

The people of this State declare that it is their inalienable right to live in a society free from the fear and threat of criminal attack upon their property and persons. We declare that the men and women who commit crimes are the enemies of the State, our society, and our general welfare. For this reason, we amend our State Constitution and Penal Code to include the following provisions:

*Provision 1:*

Any person who has been *convicted* of a felony shall, upon conviction of a second and separate felony, be sentenced to serve five (5) years in addition to whatever sentence the court imposes for the second offense. This penalty is mandatory for all felons upon their second conviction, and is to be served without possibility of parole.

*Provision 2:*

Any citizen who wounds, disables or apprehends a person committing or attempting to commit a robbery or burglary within the jurisdiction of this state shall be entitled to $1000 upon the capture and conviction of said felon. In the event of the death of said felon, an award of $1000 shall be made upon a finding of justifiable homicide by a duly constituted coroner's jury.

*Provision 3:*

The legislature hereby appropriates $20 million from the general fund for use by county, municipal or township governments for either of the following purposes:

a. the hiring, training and maintenance of additional police officers.

b. the renovation of existing jail facilities or the construction of additional cells in existing jail facilities.

This fund shall be administered and distributed by the State Attorney General's Office upon application by local governments.

***For Discussion***

1. The preamble to AB1715 declares that criminals are "enemies of the state." Are all criminals "enemies of the state"? What might be some problems with such an attitude?

2. Reread the provisions of AB1715 one at a time. Answer the following questions for each:

- What are some possible consequences if this proposition were enacted into law? Explain.
- Which of these would have a positive impact on society? Which would have a negative impact? Explain.

Senior citizens taking self-defense courses. [UPI]

## ▶ Assembly Committee/ An Activity

Imagine that you are a member of the State Assembly's Committee on Criminal Law. AB1715 has been referred to this committee for review and recommendations. To fulfill your responsibility, complete the following procedures.

*Preparations*

1. Form the class into committees of about five students each. Each committee should select a chairperson. (Any remaining students should be assigned so that each committee consists of an odd number of members. If this is not possible, chairpersons of even membered committees will vote only in the case of a tie.)
2. Members of each committee should count off 1 through 5 and read the District Description corresponding to the appropriate number on pages 197–198. This is your constituency.
3. Members should carefully review all three provisions of AB1715. For each provision, decide whether to:

*Pass:* This action, if carried by a majority, will send the provision to the floor of the Assembly *with a recommendation to pass the bill.*

*Defeat:* This action, if carried by a majority, will send the provision to the floor of the Assembly *with a recommendation to defeat the bill.*

*Table:* This action, if carried by a majority, will tie the bill up in the committee indefinitely. Members choosing this option should abstain when voting.

*Amend:* Amendments proposed by any of the members must be passed by a majority of the committee before consideration by the floor of the Assembly. (If you decide to propose an amendment, be prepared to persuade fellow committee members to support it.)

*Committee Action:* In each committee, the chairperson should follow these procedures:

Step I: Call the committee to order and read the text of Provision 1 of AB1715.

Step II: Call on members in order to make and discuss his or her recommendations.

Step III: Call for a vote on whether to *pass* the Provision (without amendment). If there is no majority to pass, call for a vote on whether to *defeat* the Provision.

- If the majority votes to pass or defeat, move on to Provision 2 and repeat steps I–III. If there is no majority either way, call for a statement and discussion of any proposed amendment(s) one at a time, then vote on each.
- If no amendment is carried by a majority, the provision is tabled.

(Repeat the process for Provisions 2 and 3.)

*Committee Report:* Each committee should prepare a brief report to the class on its recommendations for each provision of AB1715. (After all committees have reported, you might want to take a vote of the class as a whole on each provision.)

### District Descriptions

#### *District Description–District 1*

Most of your district is covered with affluent suburbs and commercial areas with shops and restaurants which cater to the upper-middle class people who live in these suburbs. Many of these people are newly-wealthy. They have "worked their way up" to important positions in business and government and strongly support the social system and conditions which they've found so rewarding.

Because the businesses in your district are so prosperous, they are frequently robbed. Your constituents' homes also seem to be targets for burglars from less affluent areas. The number of incidents has increased dramatically in recent years, as have the number of injuries, rapes and deaths caused by burglars surprised by returning homeowners and businessmen.

The people in your district want action now. However, since many of them own large amounts of property, all over the state, they are concerned about the effect AB1715 might have on the State budget. They do not want their property or income taxes to go up.

In addition, several constituents have expressed concern about the breadth of AB1715. They do not want the bill's Proposition 1 penalties to cover "victimless" crimes such as drug use or gambling, or "white collar crimes" such as corporate fraud or embezzlement.

#### *District Description–District 2*

Your district includes State's major industrial areas and the lower and middle class suburbs which house the men and women who work in these industries. Your constituents make modest livings and there is never much money left over at the end of the month. Recent economic recessions have hit your district hard. Two important factories have slowed down production and laid off almost three thousand workers.

In the past, crime in your district was limited to auto theft, juvenile "status" violations (like curfew or under-age drinking) and the occasional hold-up of a bar or liquor store. The number of those incidents has risen sharply in recent years. Alarmingly, new types of crime are occurring with regularity. Factories are reporting vandalism, arson and robberies. Street muggings and assaults are now often reported.

The people in your district are frightened, but they are unsure of the appropriate solution. Some believe that State needs stronger sanctions against criminals, but many blame their inadequate police force. They are angry because they feel that wealthier areas receive more police protection.

### *District Description–District 3*

Your district is a rectangular territory which includes a portion of the residential suburbs of Commontown (State's largest city); State University and the surrounding area where faculty and students live; and June Lake, one of the state's major recreational and tourist attractions.

All of these areas are experiencing a rising crime rate, but the problem is not as serious in your district as it is elsewhere in State. Most crime on and around the University is caused by students and dealt with by the campus security force. State and local police have beefed up protection for June Lake. Special law enforcement units are successfully controlling the victimization of tourists in that area.

June Lake residents and businesspeople are concerned that State's growing reputation as a crime center will adversely affect tourism. They would like State to take strong, well-publicized action against crime to help calm tourists' fears. But most of the other voters in your district are strongly opposed to measures like AB1715.

Your constituents, especially near the University, are very concerned about the control of handguns. Several local ordinances have been proposed and almost passed which would completely ban the ownership of handguns by private citizens. This district would have grave concerns about any state measure that would encourage private citizens purchasing more handguns.

### *District Description–District 4*

Your district is entirely rural. Your constituents live in small townships of less than three hundred people or on isolated farms. Most work for larger agricultural companies. The remainder make their livings off the land and the summer tourist trade.

As recently as three years ago, there was no crime in your district except a gas station robbery every now and then, and a few lurid murders. But recently a number of your district's large farms have become victims of payroll and petty cash robberies. All evidence indicates that these robberies are being carried out by highly organized gangs from the cities. Local police think these gangs are also responsible for the increase in rapes and assaults in your district.

Your constituents also believe that the crimes are being committed by people outside of the community. Residents believe that the actions of their local police are being hampered by unhelpful city authorities. Some even threaten that the time has come to take matters into their own hands.

### *District Description–District 5*

Your district is made up entirely of inner-city residents, who are, for the most part, poor. Some are on unemployment or welfare, but most work at jobs which only pay the minimum wage. There is little industry in the area and most workers have to commute long distances to and from work.

Until last year, your district led the state in crime. But, as the rate rises in other areas, it is dropping in your district. Many residents feel this is due to several community-organized programs which encourage citizen participation in law enforcement and help troubled juveniles find jobs and straighten out their lives. Still, your district has the highest homicide rate in the state.

Your constituents are strongly opposed to AB1715 for a number of reasons. First, in recent years State has made significant cutbacks in social welare programs. They would prefer to see the money proposed for AB1715 used to fund anti-poverty legislation. To their minds, this would be the best way to fight crime.

Finally, and most importantly, the people in your district feel that the problems they've established are helping to solve the crime problem in their area. They would like to see these programs established throughout the state. AB1715, according to their reasoning, will do nothing to counteract the basic social and economic problems of crime. Instead, it will create an atmosphere of tension which will make it impossible for them to exercise their right to "freedom from fear."

## ■ The Dangers of Fear

A 1980 survey on the attitudes of Americans about crime, called the Figgie Report, concluded that "fear of crime is slowly paralyzing American society." The Gallup polling organization also has detected the worry Americans have about violent crime. In early 1981, Gallup found that 75% of the American public *believed* criminals were more violent than five years ago. 45% said that they were afraid to walk alone at night.

One result of this belief has been a significant rise in gun sales in most parts of the country. In 1981, the *Los Angeles Times* reported that 22% of Los Angeles gun owners said they had bought firearms protection within the last year. Nearly 60% stated that they felt safer with a gun in the house.

Solutions, Inc., a New Orleans security and law enforcement training firm, has recently offered an 8–10 hour course in firearms instruction for civilians. The course brochure states that learning to shoot is "a skill for our time." A large number of women have taken the course. One of those who did, a 33-year-old New Orleans artist, said, "The last thing on my mind is to kill, but if I have to, I will." Throughout the United States, other women have been learning how to use Mace (a disabling gas), and have been taking a variety of other self-defense courses.

Many Americans (and even some police officials) believe that the crime problem is so out of control that the police can not always protect people. Unfortunately, widespread fear coupled with the wrong kind of actions can lead to dangerous and deadly results.

### Here Come the Vigilantes

Vigilantism occurred in Amerian history when people took the law into their own hands in order to punish someone thought to be a criminal. Vigilante groups were usually well organized with leaders and rules. In addition, vigilante organizations often held trials, although they were illegal. In some cases the accused criminals tried before vigilante groups were even provided with lawyers to help with their defense.

Before 1900, vigilantism was relatively common in the United States. Episodes of vigilante justice occurred all over the country. Historians count well over 300 known vigilante movements in American history. Their size varied from small groups of about a dozen people to large organizations including thousands of citizens. The majority seemed to number several hundred. The vigilantes were called by various names including "regulators," "slickers," "stranglers," "committees of safety," and "vigilance committees."

In the early years of our country, vigilantes seemed to be satisfied with beating and whipping those they believed to be guilty. However, by the 1850's, hanging had become a much more frequent form of punishment. Most vigilante organizations executed an average of four or five people. Those who were not hanged were usually forced to leave the area. Few were ever acquitted.

Vigilante organizations were usually formed for some specific purpose. Once the job was done, the vigilantes disbanded. Most operated for less than a year.

An interesting fact about American vigilante groups is that almost all of them were composed of normally law-abiding merchants, ranchers, and other prominent citizens. Moreover, vigilante leaders were usually the wealthiest and most important people in the area. Why did thse kinds of people resort to an illegal and often violent method of handling criminals?

The most important reason for vigilante justice is that police, courts and jails were lacking on the frontier. Until 1900 (when vigilantism had almost disappeared), many people lived in isolated frontier settlements many miles from established law and order. Faced with doing nothing about rampaging outlaws or taking the law into their own hands, respectable people chose the vigilante solution. This was a natural thing to do since frontier Americans were used to relying on themselves to solve problems.

Another reason for vigilantism had to do with the determination of businessmen and the wealthy to maintain political control over the lower classes. When crime, violence, or political corruption seemed to tip the balance of power in a community toward the lower classes, a vigilante movement, often led by merchants, bankers or large landowners, was often organized.

In some cases, vigilance committees were set up simply to keep taxes low. It was much cheaper to take care of criminals by hauling them before a group of volunteer vigilantes than paying sheriffs, judges, prosecutors and jailers to do the job.

### Vigilantes From The East

The first vigilante movement in America was formed in the South Carolina backwoods in the 1760's. This was a newly settled frontier area that had just undergone a costly Indian war with the Cherokees. Orphaned and homeless young people drifted into outlaw and horse stealing bands. These bands also kidnapped young girls, raped, and robbed.

Since sheriffs and courts simply did not exist on the South Carolina frontier, a group known as the Regulators was organized in 1767 Composed of up to 6,000 normally law-abiding settlers, the Regulators attacked and broke up the outlaw gangs. The lawbreakers were given trials, whipped, driven out of the area, or forced to work on farms. Sixteen were killed.

The Regulators disbanded in 1769 with the establishment of government courts and sheriffs. However, this group of vigilantes provided a model that many other vigilance movements throughout the country would copy in the future.

Vigilante movements were set up again and again in the East before the Civil War to deal with horse stealing and counterfeiter gangs, gamblers, and bands of robbers. Vigilantes were particularly active in Alabama, Mississippi, Louisiana, Iowa, Indiana and Illinois.

In northern Illinois during the 1830's, several gangs of horse thieves and counterfeiters actually ruled over a number of rural counties. The outlaws controlled elections, and even burned down a newly-built courthouse.

In April 1841, the first of several Regulator companies was formed by well-to-do settlers. On one occasion, two accused horse thieves who had also been accused of murder were tried by 120 Regulators before 500 spectators. The leader of the Regulators served as the judge. One lawyer was appointed to represent the accused, while another lawyer acted for "the people." Witnesses were sworn and testified. Finally, the entire crowd watching the vigilante proceedings voted for the death penalty. Within an hour the two outlaws were hanged. The Northern Illinois Regulators disbanded after the gangs of outlaws were broken up.

### Vigilantes From The West

Vigilante groups were more numerous and generally more deadly in the West. Between 1850 and 1900, about 200 vigilante movements were formed. Over 500 accused horse and cattle thieves, murderers, robbers and others were executed. Texas holds the record for the most vigilante killings with 140. However, one Montana vigilante group in 1884 was responsible for 35 executions. This was the deadliest vigilante movement of all. Theodore Roosevelt, who was in Montana at this time during his "cowboy days," wanted to join the vigilantes but never did get to do so.

Some historians have attempted to classify vigilante movements as "constructive" and "destructive." According to this viewpoint, "constructive" vigilante groups attempted to destroy the criminal element quickly, restore order, and then disbanded. These groups usually had widespread public support. "Destructive" vigilante movements were often divided from within and opposed from without. The resulting conflict frequently led to chaos and violence.

A good example of a "destructive" type of vigilante movement was the Regulator-Moderator War of Shelby County, Texas. In 1840, when Texas was an independent country, a group of Regulators arose to get rid of a corrupt ring of county officials. There was also a good deal of horse thieving, counterfeiting, slave stealing, murder, and other violence going on.

The Regulator leader was killed and replaced by a man who took his role so seriously that he wore a military uniform. Soon an opposing group of vigilantes calling themselves the Moderators was formed. However, both groups became infiltrated with criminals. Vengeance, personal and family feuds, and excessive violence caused the original reason for the formation of the vigilante movement to be forgotten. There was an all out battle between the Regulators and Moderators in 1844 involving hundreds of men. Sam Houston and the Lone Star Republic militia finally stopped the violence.

The Johnson County Invasion is an example of what has been called "constructive" vigilantism. This involved a conflict over the use of rangeland by big cattle ranchers and homesteaders. The big ranchers were used to having the range open for their large herds to graze. However, homesteaders began to fence off sections of land that they owned. At first, the cattle barons accused the homesteaders of rustling. A few homesteaders were murdered, but no one was ever convicted. In April 1892, the large cattle ranchers brought in a trainload of heavily armed gunfighters to supposedly go after the "rustlers." In reality, they were hired to force the homesteaders out of the area. The gunmen quickly went to work and killed two settlers. This so engraged the homesteaders that they formed a group of Regulators, rounded up the invaders, and held them until federal troops arrived. Unfortunately, after being bailed out of jail by the cattle barons, the gunslingers disappeared. As a result they were never put on trial. But this was 1892. Twenty years earlier they all might have been strung up long before the federal troops came to the scene.

A mob takes the law into its own hands in this 1925 lynching. [UPI]

### The San Francisco Vigilante Committees

The most famous examples of vigilantism in American history occurred in San Francisco in 1851 and 1856.

In 1851, with the Gold Rush at its peak, San Francisco was wide open, rough, and dangerous. Still, it was a city with a sheriff, court and jail. However, after a number of robberies, a Committee of Vigilance was formed composed of 500 leading San Francisco citizens. This vigilance movement was led by William T. Coleman, a young merchant.

The Committee of Vigilance announced that, "no thief, burglar, incendiary, or assassin shall escape punishment, either by the quibbles of the law, the insecurity of prisons, the carelessness or corruption of the police, or a laxity of those who pretend to administer justice." Clearly, these San Francisco vigilantes had a low opinion of those responsible for law and order in the city. Before the year ended, four accused criminals were hanged, one was whipped, fifteen were forced to leave the city, and another fifteen were handed over to the legal authorities. After cleaning up the city, the committee disbanded.

However, five years later San Francisco was in even worse shape than before. Murders and other types of crime were rampant. Even more frightening to the San Francisco business leaders was the fact that the city government was in the hands of a corrupt political machine. David C. Broderick, the Democratic Party leader of San Francisco, controlled the city. Kept in power by the votes of Irish Catholic workers, Broderick stuffed his pockets and those of his friends with public funds. At the same time the businessmen of the community suffered from high taxes. By

1856, San Francisco was facing bankruptcy. Businessmen in the city who depended on credit from eastern banks were worried.

James King was the editor of the San Francisco *Daily Evening Bulletin*. King, who had been a vigilante in 1851, wrote editorials attacking the crime problem and the corruption of the Broderick political machine. King also began to revive talk of vigilante justice. On May 14, 1856, he was shot to death on a San Francisco street.

The following day, a new vigilance committee was formed by William T. Coleman who had led the vigilantes in 1851. Within a few days James P. Casey, one of Broderick's political flunkies, had been arrested by the vigilance committees for shooting James King, tried, and hanged.

During the next few months perhaps as many as 8,000 San Franciscans joined the vigilantes. Most were merchants and skilled workers. Few were Irish. The huge organization was controlled by an executive committee of businessmen headed by Coleman, now a wealthy San Francisco importer, who held almost dictatorial powers. A list of suspects was drawn up. People were arrested and tried at the vigilante headquarters which was called "Fort Gunnybags" due to the fact that it was protected with sandbags. Altogether four accused criminals were executed. Broderick's henchmen were put on ships headed for eastern and foreign ports and told never to come back to the city. Broderick himself was called before the vigilance committee, but was released. He left town.

Finally, the vigilance committee formed a political organization, the People's Party, that controlled San Francisco's city government for the next ten years. In operation only three months, the vigilance committee disbanded on August 18 with a parade through the city.

The San Francisco vigilance committees of 1851 and 1856 were widely publicized and copied throughout the West. However, there was always a fine line between a vigilante committee and a lynch mob. On July 4, 1851, a bunch of drunken miners smashed into the shack of a Mexican woman in Downieville, California. Thinking she was being attacked, the woman stabbed one of the miners, who later died. The woman was quickly tried by a vigilante jury and sentenced to death. She was hanged from a wooden bridge over the Yuba River.

Was vigilante justice warranted? One former Colorado vigilante thought so. "There were no appeals in those days," he said, "no writs of errors, no attorney's fees, no pardon in six months. Punishment was swift, sure, and certain." On the other hand, a New York City newspaper editorial criticizing the San Francisco vigilance committee of 1856 stated: "Better to endure the evil of escape of criminals than to inaugurate a reign of terror which today may punish one guilty head, and tomorrow wreak its mistaken vengeance on many innocent lives."

***For Discussion***

1. Why did normally law-abiding and well-to-do citizens turn to illegal vigilante methods?
2. Identify two things that made the San Francisco vigilance committee of 1856 different from other western vigilante groups.
3. How are vigilante groups and lynch mobs different? How are they similar?
4. Do you think vigilantism was ever justified in American history? Do you think it would ever be justified today? Explain.
5. *For Extra Credit:* Read and do a written or oral report on *The Ox-Bow Incident* by Walter Van Tilburg Clark. This fictional story dramatizes the slim difference between vigilante justice and lynch law.

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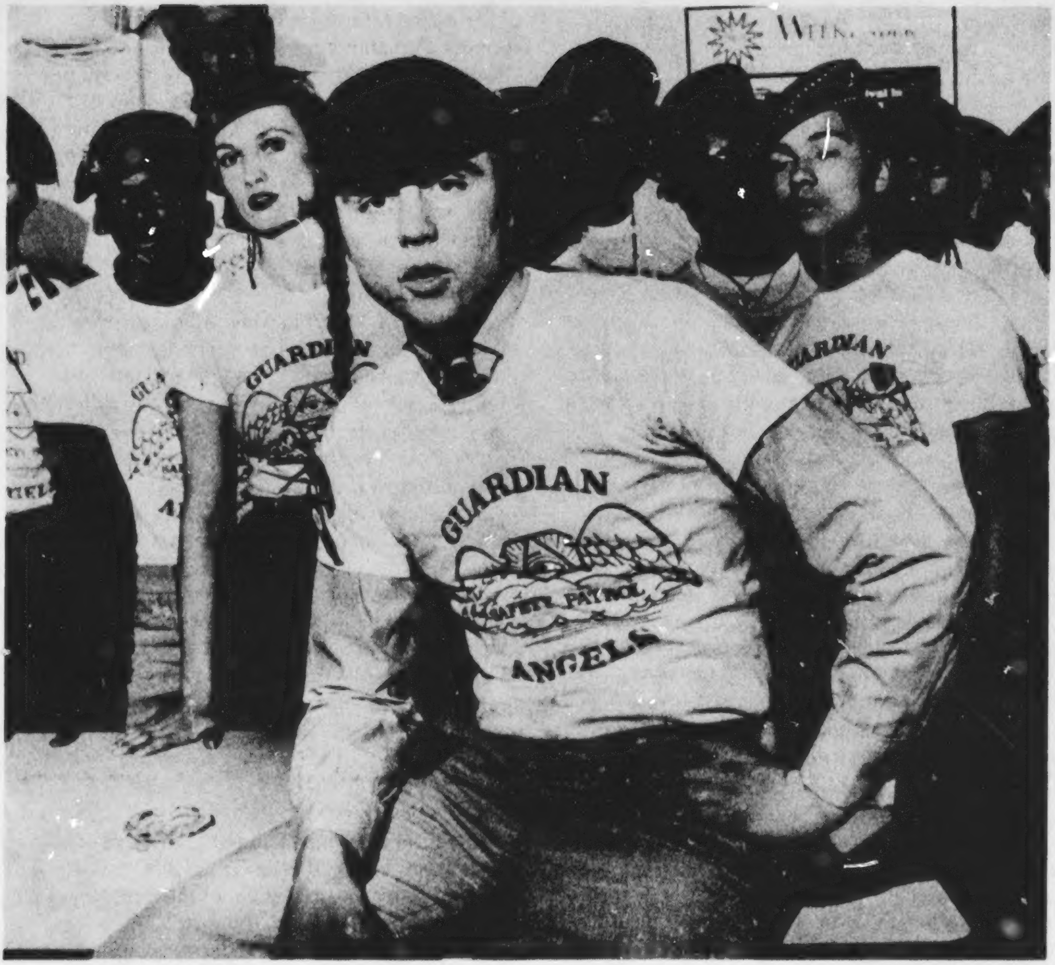
## ■ Guardian Angels

Curtis Lee Sliwa, in his late twenties, is a high school drop-out who is called "The Rock" because of his reputation for getting into fights as a teenager. Over the last few years, Silwa has almost single-handedly organized an anti-crime youth patrol in one of New York City's most dangerous places.

Called the "Guardian Angels," Sliwa's youthful patrolers ride New York's subway trains that are called by such nicknames as "The Zoo," "The Gang Train," and "The Muggers Express." The Guardian Angels, wearing red berets, go down into the subways every night unarmed. "Our main weapon is our presence," says Sliwa. However, members of the Angels, who tend to be tough streetwise kids, will try to stop muggings, rapes, and other crimes they see taking place. Sliwa claims that his group is responsible for over 100 citizen arrests since his operation began in 1979. One subway rider said of the Guardian Angels: "It's nice to have them around. Usually if you see a bunch of kids that age down here, you toss your wallet at them and run like hell."

The Guardian Angels currently is made up of around a thousand youths including about 30



The Guardian Angels, led by Curtis Sliwa (Center), walk the streets of New York and other major cities as a volunteer anti-crime patrol. [UPI]

young women. Most are black or Latino from New York's poorest and most crime infested neighborhoods (Sliwa is from a white middle class family). To become a member of Sliwa's elite group, a young person must be at least 16 and recommended by someone who is already a member. Recruits, however, must take martial arts training, and must prove themselves out on patrol. In addition, they have to either go to school or work. Sliwa operates the Guardian Angels from his apartment in the Bronx. He and the other wearers of the red berets collect no pay.

Despite objections from the city transit police who also patrol the subways, the Guardian Angels have been widely accepted by New Yorkers. In 1981, Sliwa even expanded his volunteer approach to crime-stopping into several other eastern cities and Los Angeles. Why does he do it? Sliwa once said, "Volunteer patrols seemed the only way to show those bums the public's had enough."

***For Discussion***

1. In what ways are the Guardian Angels similar to vigilantes? How are they different?
2. What might happen if the Guardian Angel movement became more widespread? What problems might arise? What might be some benefits?
3. If you had an opportunity, would you join the Guardian Angels or a similar organization? Why or why not?

## Burglary Prevention/A Plan for Positive Action

"Less than a million people are criminals and they're running the country; people are afraid to go out on the street. We must have another million people trying to deal with the problem. So how did it get so bad? Because people just ignore it. We need to get the whole community to help out: housewives, sons, fathers, neighbors."

—Lyle Kurisaki, former convict and Director of Prison Preventors, Los Angeles

### The Problem of Burglary

The law defines burglary as "the unlawful entry of a structure with intent to commit a theft or any felony." A burglary involves breaking into, or entering without permission, a house, apartment, garage, store, warehouse, school, car (for the purpose of taking something out of it), or some other structure.

In about a quarter of all reported burglary cases, burglars are able to enter a structure without using force. Burglary is known as a "crime of opportunity." Burglars have an opportunity to steal because so many people fail to take precautions against them. Many people, it seems, leave their apartments or houses without locking the doors and windows. Most people do make a point of locking up each time they leave home, but many of them have never bothered to check the quality of their locks. Often, it's as easy for a burglar to break a lock as it is to open the front door and walk in.

More burglaries are committed every year in the United States than any other felony offense. In 1981, more than 3.7 million burglaries were reported, and law enforcement experts believe an amount equal to that went unreported. That works out to more than 10,000 burglaries *every day*. The reported losses amounted to $3.5 billion. To get an idea of how much money that is, imagine earning $1,000 a day. At that rate, it would take you more than 9,500 years to earn $3.5 billion!

The number of reported burglaries increased by 23% between 1977 and 1981, and it continues to rise today. Though burglary is far more serious in large cities, the problem is growing even worse more quickly in small towns and rural areas and remember, only about 17% of all burglaries are ever solved.

### Neighborhoods of Strangers

Perhaps more than anything else, burglars benefit from the fact that in many neighborhoods residents do not know each other. A neighbor is literally someone who lives nearby, but the word has come to suggest much more in our culture. Neighbors are supposed to be friendly, helpful. Before this century, neighbors traditionally banded together to help each other build houses and barns, sow and harvest crops, and protect their communities. But in our modern society, such tasks are taken care of by professionals, and people move from residence to residence so often that neighborly communities rarely develop. Because of the growing crime problem, many residents are afraid of talking to strangers—including their own neighbors.

Police/citizen cooperation can help reduce crime. [CRF Photos]

As a result, burglars rarely have to worry about being reported by a suspicious neighbor while they case or break into a house or apartment. In the words of one midwestern community leader, "Neighbors have go to start realizing that they don't live in individual castles surrounded by moats." Most law enforcement officials agree that the real key to reducing the burglary problem is neighborhood cooperation and awareness. In many large cities, neighbors have formed "block associations" to keep the neighborhood clean, friendly and safe. In Boston and New York, such associations even hire private guards to patrol their blocks at night. The concept of neighborhood associations is beginning to move into the suburbs.

### The Tierra Bonita Neighborhood Association

Tierra Bonita is a pretty, hillside middle-to-upper-class suburb on the West Coast. Because the houses are set back from the road, isolated by shrubbery and trees, burglars were having a field day there.

In desperation, 1,600 homeowners formed the Tierra Bonita Association of Neighborhoods. One of the Association's first tasks was to examine the burglary prevention efforts of the local police department. Members discovered that the department had only three officers patrolling the streets of Tierra Bonita for burglars. The police had tried to keep a close eye on the houses of vacationing residents, but with so few officers such surveillance was impossible. Clearly, the Tierra Bonita police were not budgeting enough money for burglary prevention.

The Tierra Bonita Neighborhood Association concluded that the police could not solve the problem without community support, so the Association formed an anti-burglary committee. The committee notified all Tierra Bonita residents by mail that a meeting was going to be held to dicuss the problem of burglary. The police, too, were invited.

At the meeting, the police ran a video show explaining how burglars break in, and how residents could better safeguard their homes. The group leaders then explained the importance of the neighbors' protecting each other. They passed out a list of the names, addresses and phone numbers of all association members. With this list, if any resident noticed something suspicious going on in or around a neighbor's house, he or she could notify that neighbor. If a resident were to go on vacation, he or she could ask a neighbor to watch the house.

The meeting gave the residents the opportunity to meet each other and build a spirit of cooperation. They also elected a coordinator for each small neighborhood located within the Tierra Bonita area. The coordinators were the primary contacts with the police department. If a resident was having trouble getting the police to respond to suspicious activity, for instance, the coordinator would know who to call to get action.

The Tierra Bonita Association of Neighborhoods holds an annual meeting to renew the community spirit of cooperation and to introduce new residents to the program. During the Association's first year, when compared to the twelve month period *prior* to their anti-burglary efforts, the burglary rate in Tierra Bonita was reduced by over 54%.

### What Every Resident Should Do

The success of Tierra Bonita depended on the energy and concern of one or two spirited community leaders. Not every neighborhood has skilled organizers who can accomplish what they did in Tierra Bonita.

On the other hand, anyone can make a point to get acquainted with at least one neighbor. The two neighbors can then agree to keep an eye out for each other's property.

This establishes a kind of "buddy" system. While one is on vacation, the neighboring buddy is expected to pick up the morning paper, keep the lawn mowed and vary the position of the drapes and lights inside the house. In this way the house looks "lived in," and a burglar is less likely to choose it for a target.

Residents should also be aware of how easy it is to break into most houses and apartments, and should take precautions to ensure that their homes have no weak spots that could permit easy entry.

### *For Discussion*

1. Why do you think that it is so difficult for police to apprehend burglars or reduce burglaries without citizen help?
2. Why do you think young people commit more burglaries than adults?
3. What are some easy ways to reduce burglary rates? What can individual homeowners do?
4. How much responsibility should neighbors have for each other? Could neighborhood watches lead to an invasion of people's privacy? How could such problems be avoided?
5. Have you ever seen someone suspicious hanging around a neighbor's house? Did you call the police? Would you if it happened again? Why?
6. Do you think harsh prison terms for burglary reduce the problem? Or do you think burglars don't worry about getting caught? Explain your answers.

## You Can Make a Difference/ Activities

Studies released in 1983 indicate that citizen involvement in neighborhood watch programs *do* reduce crime.* For example, in a well-organized Detroit program, burglaries were reduced by 62% and all crimes were reduced by 55%. Seattle and San Diego have also reported significant improvements. Authorities note that criminals seem to avoid those neighborhoods where residents are organized, involved and vigilant.

You can make a difference, too. Working as individuals, small groups or as a class, take on one or all of the projects described below and become part of a solution to America's crime problem that is working!

### Burglary Prevention Activities

1. *Outside Resource Speakers*

Most police departments have burglary prevention units. Invite an officer from one of these units to come to your class and discuss how serious the burglary problem is in your community.

2. *Home Security Check*

Although good locks and other precautions do not guarantee that you will not be burgled, they do help to deter burglars. It is especially difficult for a burglar to break into a well-protected house or apartment in a friendly neighborhood; to do so the burglar must use considerable force by jimmying a door or breaking a window, and in either case the noise might alert a neighbor. To check your home (or help a neighbor) for security, examine every door and window to determine if it is properly protected:

- The best protection for doors is a deadbolt, at least an inch long, an inch wide, and a half-inch thick. This type of bolt has no beveled edges or springs, it is just a simple square-edged bolt. Other types of locks can be forced open relatively easily, but a good deadbolt will stand more force than the door itself. If your doors do not have deadbolts, suggest to your parents that they get some.
- Sliding glass doors are perhaps the most difficult to burglarproof. All a burglar has to do is lift the door out of its track, and he is in the house silently, in just a few seconds. To prevent this, bolts or pins should be fitted into holes drilled through the track into the frame of the door. The bolt or pin can be easily removed from the inside when you want to use the door. If you have no drill or bolt, and want a temporary safeguard, a broomstick can be cut to fill the door's lower sliding track. This is better than nothing, for the door cannot slide, but the broomstick method is not burglarproof—some sliding doors can still be lifted out with a broomstick in place, or the burglar may be able to work the broomstick out of the track.
- Windows are often the weakest point in a home's protection. Old-fashioned sash windows are equipped with a simple lock between the two window frames that can be slipped open from the outside or broken. Sash windows can be secured by using the sliding door technique. A pin, bolt or screw can be placed in a hole that is drilled at a downward angle through both the upper and lower window frames. Some people hammer nails into the track of the window so that it can only be opened enough to allow a bit of fresh air to circulate.
- Louvered windows are almost impossible to make burglarproof. Burglars simply slide the panes out of their metal holders and climb in. The only way these types of windows can be secure is with iron grills over the windows on the outside of the house. Be sure these grills can be opened from the inside, however, or they will pose a serious danger in case of fire.
- Thick shrubbery or untrimmed bushes offer the burglar a perfect hiding place while he works quietly at a window or a door. Be sure that all bushes are properly trimmed and there should be exterior lights to illuminate any yard area where a burglar might lurk.
- An important aspect of a home security check is the listing of all your valuables and their serial numbers or identifying marks. Despite all precautions, if you are burgled, a careful record will make it possible for the police to return your possessions should they ever catch the burglar or the fence who buys the burglar's goods. This record will also make it easier for you to collect reimbursement if there is any insurance covering the stolen items. As an added protection, you can engrave your name on your valuables with a metal-engraving tool available for loan at the police station.

Check all your doors and windows to be sure that they are protected. List the weak spots, then explain to your parents what steps should be taken to protect your home. Then list all the valuables in the home with identifying numbers or marks, and put the record in a safe place.

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**Criminal Justice* Newsletter: National Council of Crime and Delinquency, February 28, 1983.

### 3. *A Neighborhood Burglary Prevention Meeting*

Neighborhood cooperation is the real key to burglary prevention. You and your classmates can have a real impact on the problem of burglary by organizing neighborhood meetings in your community to alert people to the problem and by working together to solve it. (This activity can also be used as a basis for making a presentation to your local P.T.A. or a community service club such as the Lions or Rotary.)

*Step I:* Organize yourselves into teams of four or five students. It is helpful if all team members live in the same general vicinity of one another.

*Step II:* Find a location for the meeting. If a team member's parents will let you use their home, be sure to get the exact address so that you will be able to give exact directions to neighbors. Local parks also often have meeting rooms you can arrange to use, or you may be able to use a room at your school. If the weather is nice, a team member's parents may even be willing to organize a block party, or you can meet outside in someone's backyard.

*Step III:* Schedule a *specific time* and *date* for the meeting (evenings or weekend mornings tend to be best).

*Step IV:* Plan a program for the meeting. Your teacher, or a student coordinator, should call the local police department and try to arrange for speakers on burglary to attend the various neighborhood meetings. Many departments have special officer teams who specialize in making presentations on burglary or car theft prevention and other topics.

One of your team members should also plan to act as moderator and prepare a short presentation. You can use the materials in this section as the basis. (It is a good idea to check with the police speaker in advance to make sure the presentations don't overlap.) Other team members might wish to make some visual aids showing burglary statistics or elements or burglary prevention. Buy enough pencils and paper for each attendee at the meeting. (Also, preparing nametags for the participants is a nice touch.)

*Step V:* Write a Notice. Design a one-page notice for your neighborhood meeting, specifying exact time and place, and describing briefly what will occur at the meeting. You may include a short paragraph describing the problem of burglary and how important neighborhood cooperation is in preventing it.

When you are finished, make copies and distribute them to residents in the surrounding area. Fliers should be distributed before the meeting is to be held.

*Step VI:* Hold the meeting. When the day comes for the neighborhood meeting, be sure to arrive early to set up chairs and to greet all the neighbors. Display the poster with your survey results in front of the room.

Allow about 15 minutes for latecomers to arrive, then call the meeting to order and deliver your presentation. (Don't worry if you don't get a huge turnout, even a few can make a big difference.) Begin by welcoming your neighbors to the meeting. Focus your remarks on the importance of neighborhood cooperation in fighting burglay, and use your chart to point out how serious the problem is. You might want to read the Tierra Bonita story out loud, explaining that the same concept can be applied to a smaller community or to one neighborhood. Answer any questions your neighbors may have; then, if you have arranged for a speaker from the police department, introduce the officer. If you have no speaker, go over the home security check again.

Before adjourning the meeting, ask residents if any of them would like to form a committee to discuss the creation of a permanent neighborhood association. Ask residents if they would be willing to exchange names and phone numbers with their neighbors, and to get to know each other a little bit better. Then pass out paper and pencils. Remember: knowing neighbors and getting them to watch out for one another's homes is an important element in preventing burglary or catching burglars in the act.

## A Citizen Task Force

*Introduction:* In the following simulation, you will take the role of citizens in a city plagued by an upsurge in crime. You have been appointed to a special task force. It's your job to make recommendations to the mayor about proposed programs to help solve the problem. The following is a transcription of a speech delivered by the mayor concerning the crime problems facing the city of Lancaster. Read it carefully and begin thinking about recommendations you might make.

### Report from the Mayor

I'm pleased to report that today, in spite of the general economic decline felt in the rest of the country, Lancaster is bustling. Our population is growing; our standard of living is increasing. In the last year alone, we've attracted three new major industries to our city, each bringing money and jobs. While it would be nice to attribute these successes entirely to my administration's skill, the facts just don't support that claim. Each and every member of our community has worked hard to bring this about and we all deserve to share the applause.

But while we're congratulating each other, it would be wise to remember that Lancaster still faces a number of problems. Our task is not yet complete. There is no need to ask what problem now poses the greatest threat to our community. Each and every one of you has felt its effects. Some of you can no longer get insurance for your businesses; others must pay premiums which eat up your profits. We are living in an atmosphere of tension. I dare not speak of the other costs—the deeply personal losses—that some of you have had to bear.

I am speaking, of course, about our increasing troubles with crime. But before I continue, let me make one thing perfectly clear. Lancaster is committed to solving this problem democratically. We do not believe our problem is caused by a weak court system or ineffectual laws. Quite the reverse! I believe, ladies and gentlemen, that our justice system is the best in the world. Our problem does not lie there. The root of our crime problem is that we can't catch all the criminals. I do not, by this remark, intend to disparage our police. In spite of their difficult, often impossible task, they are performing exceptionally well. There is no point in even discussing blame. Our task is, rather, to find a solution.

Fortunately, we are not alone. Many other communities around the country face this same difficulty. In response, the Federal Government has created a new program, called "108F." Under this program, we are entitled to $100,000 a year in Federal monies to be spent solely on effective crime control in our community. At today's costs, that isn't much. But it is a start.

We can spend the "108F" money any way we choose. Because of the nature of the problem in our community, it has been strongly recommended that at least $40,000 of this money be set aside for a Victim's Assistance Program, and I'm prepared, here and now, to commit to that recommendation. This money will be used to cover medical bills, funeral expenses and psychological counseling for the unfortunate and often forgotten men, women and children who have suffered the most in the crime war.

I urgently solicit your opinions and suggestions about the remaining $60,000 "108F" funds. How should this money be spent? What programs would you like to see put into effect? What do we need to do? To help me make a decision, I am appointing a special Citizen Task Force to review various proposals that have been submitted and to make recommendations about their implementation. I remind you that we have solved many problems by working with each other. If we all stick together, Lancaster can lick this one, too.

### *For Discussion*

1. What is Lancaster's current problem? Describe it in your own words.
2. How does the mayor propose to solve this problem?
3. What is the mayor's suggestion for spending part of the 108F money? Do you agree with this commitment? (See answer section.)

### Proposals for 108F Grants

Imagine that these proposals have been submitted for the mayor's consideration. Read them carefully. In the following activity, you will be asked to help decide how to spend the remaining 108F funds.

Program 1: *Police Aides*
Sponsoring Group: Lancaster Police Department
Cost: $36,400

Six-month program will provide each of the fourteen two-man police patrol teams working in the Downtown area with one half-time assistant. These aides would be students pursuing careers in police science or public administration at the local college. They would take over secretarial duties and thus allow officers to spend more time on patrol. The budget would pay for fourteen aides' salaries ($5.00 an hour, for twenty hours a week) for six months, resulting in more than seven thousand hours of additional patrol time.

Program 2: *Force One Security Patrol*
Sponsoring Group: Lancaster Chamber of Commerce
Cost: $48,360

Six-month program will provide a two-man private security patrol in the Downtown business district during non-business hours (from 5:00 p.m. to 8:00 a.m. on workdays and twenty-four hours a day on weekends). The Force One Security Agency would hire and equip the patrolmen. The budget includes salaries, expenses and transportation costs for six months.

Program 3: *Self-Defense Classes*
Sponsoring Group: Urban Youth Association
Cost: $13,500

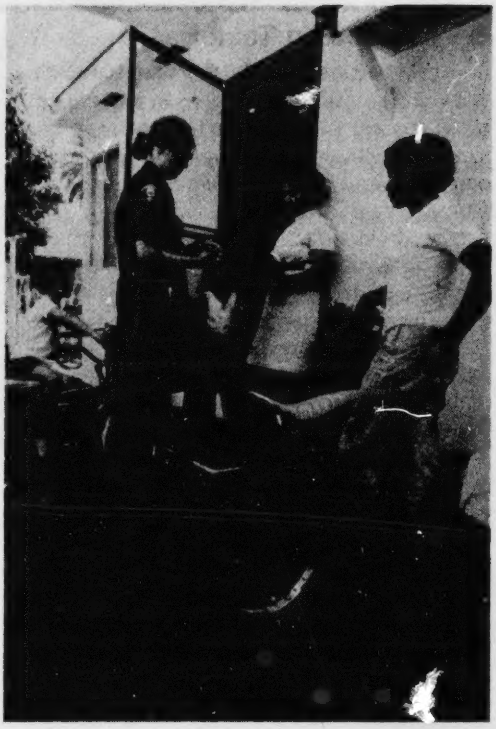
Year-round program will provide fee-lessons in Karate and other forms of self-defense to Lancaster residents. Budget includes instructor's fee and classroom rental for four lessons a week for one year. The Urban Youth Association will publicize availability of lessons at no cost.

Program 4: *Crime Prevention Seminars*
Sponsoring Group: Lancaster Police Department
Cost: $22,525

Year-round program will provide four two-hour discussions a week for one year. Seminars will be taught by police officers and will focus on techniques and practices that private citizens can use to reduce criminal opportunities. Budget includes officers salaries, publicity expenses, and money for writing and printing brochures and pamphlets for distribution at seminars.

Program 5: *Citizenswatch*
Sponsoring Group: Citizens for Public Safety (CPS)
Cost: $11,350

Budget will buy equipment for Citizenswatch patrols—ad hoc groups of Downtown merchants and their friends who patrol streets in Downtown commercial and high-income residential areas, looking for criminal activities and attempting to apprehend criminals. In the past six months, this group has captured forty-six suspects though, because of the group's methods, only half were caught with enough evidence to warrant a trial. CPS will use the money to buy forty Citizen Band radios and twenty walkie-talkie which can be used to improve communications between CPS patrols and the Police Department. Closer communication should result in more convictions, since police officers will be able to get to the scene of the crime before CPS members have unwittingly destroyed evidence or violated suspects' rights.



A police officer explains a crime prevention program. [CRF Photo]

Program 6: *Crimescope Hotline*
Sponsoring Group: Channel 14 TV Station
Cost: $24,955

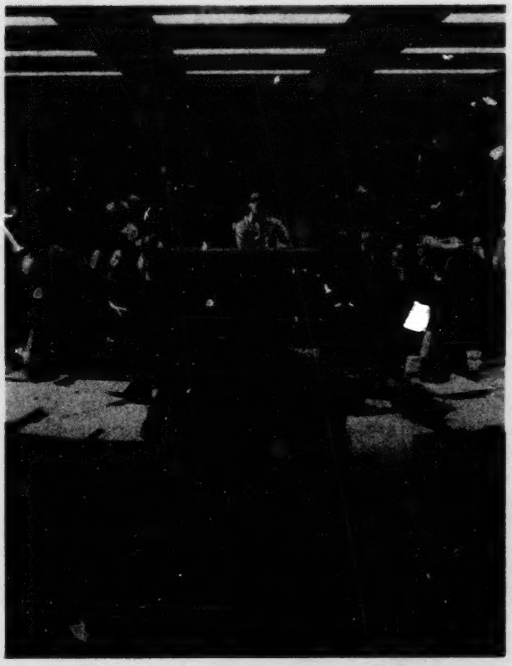
Year-round program will provide a twenty-four hour telephone line and $25,000 in reward money for a secret witness program. Informants will be coded and information relayed to police for further action. Total budget will be $49,910, but Channel 14 has offered to raise half the money privately.

## ▶ Citizen Task Force/ An Activity and Worksheet

Imagine that you have been appointed a member of the mayor's special Citizen Task Force. It is your job to make recommendations about the use of the 108F federal monies in the city of Lancaster. Make your recommendations carefully and wisely.

*How to Proceed:*

1. Divide the class into six groups.
2. When your group is assembled, appoint a chairperson to help lead its discussion and make a presentation of recommendations to the mayor.
3. Each group should carefully review:
   - Report from the mayor, page 208
   - Proposals for 108F grants, page 208–209
4. Use the following worksheet in making your group decision. Carefully discuss every item. Remember: this is a group decision and every member should participate.



What recommendations to reduce crime would you make to the mayor? [CRF Photos]

**Worksheet**

*Part A*

Which of these proposals is most worthwhile? Rank the proposals using the guidelines below:

Column A: *Content*
Depending on whether you think the proposal would really help stop Lancaster's crime problem, assign each a number from 1 (best idea) to 6 (worst idea). Ask yourself the following: Is this a good solution to the crime problem? Will it work in Lancaster?

Column B: *Cost-Efficiency*
Which of these proposals will have the greatest impact on (make the most changes in) Lancaster's crime problem for the least amount of money? Assign each a number from 1 (most cost-efficient) to 6 (least cost-efficient) accordingly.

| | Column A: Content | Column B: Cost-Efficiency |
|---|---|---|
| #1: Police Aides | | |
| #2: Force One Security Patrol | | |
| #3: Self-Defense Classes | | |
| #4: Crime Prevention Seminars | | |
| #5: Citizenswatch | | |
| #6: Crimescope Hotline | | |

*Part B*

If it were your decision, how would you spend the remainder of 108F money? You can award the money to one, two or three groups, but remember, the total award must be $60,000 or less.

| *Proposal* | *Cost* |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| Total: | $ |

5. Prepare a brief presentation (about 3 minutes long) to make to the mayor. The presentation should clearly:
   - spell out how the $60,000 in 108F funds should be spent, and
   - provide a statement of the group's reasons.
6. The teacher will take the role of the mayor in council chambers and ask each "Task Force" to report one by one. After all have reported, discuss the various recommendations as a class. The mayor will then render a decision on the basis of content, cost-efficiency and presentation.

***Debriefing***

As a class, discuss the following questions:

- After hearing all the groups' reports, would you change your mind or your recommendation? Why?
- What additional proposals can you think of that would help solve Lancaster's crime problems? *Describe and summarize* them on the chalkboard.
- What are the strengths of each? What are the weaknesses?
- Would any of these be better than those proposed to the mayor? Why?

To conclude the discussion, you may wish to conduct a class vote to find out which of all the proposals discussed the class thinks would be the most effective.

## ■ A Conclusion on Crime

Crime, Police, Criminal Courts, Corrections, Juvenile Justice and Solutions—you've sampled them all. A few things are clear. America does have a significant crime problem. It also has a sophisticated criminal justice system involving legislators, law enforcement, judges, prisons, probation and parole.

Other things aren't quite so clear. Just how serious is America's crime problem? Is America's criminal justice system working and, if so, how well? What should be preserved, what should be changed? Americans—professionals and lay people alike—are divided on the answers to these questions. Differences of opinion on the exclusionary rule, tougher criminal laws, harsher sentencing, the death penalty, diversion, handguns and the causes of crime often reflect and fuel the debate. Why are we so divided on these issues?

### Public Perceptions

Opinions are only as good as the information used in making them. Opinions about crime and the criminal justice system are no exception. Based on the best information, then, is the crime rate in America increasing, decreasing or holding steady? Even the experts aren't sure. It all depends on the source of the statistics, the method of analysis, and the indicators that are used. For example, the use of police arrest records ( such as the FBI's Uniform Crime Reports) and U.S. Census Bureau statistics has led to different appraisals about crime rates.

One thing seems more certain. Scientifically-conducted polls indicate that people believe the problem of crime is getting worse. Public attitudes also tend to favor harsher punishment for criminals, less judicial discretion in sentencing, and the death penalty as methods for reducing crime. Apparently, Americans feel that the criminal justice system is just not working.

### The Impact of Media

The news and entertainment media may be contributing to these perceptions. Crime makes a good story; newspapers and news broadcasts devote significant coverage to crime and criminal justice issues. Much of the coverage is balanced and factual; other times it borders on the sensational.

Many movie and television dramas also center on crimes and criminals as the basis for their stories. In recent years, a number of movies have portrayed American cities as wracked by violent crime, ill-served by the police and courts, and more like battle grounds than municipalities. In many, citizens, victims or the police are driven to take the law into their own hands. The resulting bloodbaths are often played out in slow motion and grisly detail. Films like *Death Wish I* and *Death Wish II, Magnum Force, And Justice For all,* and *Vigilante* paint a grim picture about crime and criminal justice. Widespread public exposure to such media may be creating a "myth" of crime beyond its realities. Under such conditions, what should be done?

### The President's New Crime Package

On March 15. 1983, President Reagan proposed a new comprehensive Crime Control Act to Congress which he claims will allow "the forces of law to regain the upper-hand over the forces of crime." Similar to proposals of the previous year, the Act would, among other things:

- Reinstitute the federal death penalty for some crimes (e.g., treason and certain homicides);
- Restrict bail for dangerous suspects and for convicted persons waiting on appeals;
- Abolish parole;
- Reduce judicial discretion in the sentencing process;
- Restrict the use of the insanity defense; and
- Establish minimum mandatory sentences for use of firearms while committing federal crimes.

The new act reinforces the Administration's pledge to get "tough on crime" and reflects the view that America's criminal justice system is in need of major reform. There are other views.

### One Reporter's Opinion

In February, 1983, ABC-TV devoted much of its newsbroadcasting to the topic of crime in America. Richard Threlkeld, a reporter on "World News Report," had some interesting insights at the conclusion of his two-week series about criminal justice. Here is a sample of his statements:

"The sense you get after six months of trekking around our criminal justice system and talking to so many of the cops and criminals and judges and victims who are part of it is a sense of surprise, surprise that so much of what I thought, what most everybody thinks about all the crime in America is so different from the reality of it. Crime is not getting worse and worse, it's getting better. I thought that if we had a lot tougher laws and a lot more cops we could stop crime; a cop in Chicago put me straight on that...

"I found that when it comes to stopping crime, getting tough is not the same as getting smart. An ex-con from New York who's going straight was evidence that parole works for most criminals and that abolishing parole doesn't stop crime.

"A judge in Albuquerque helped me see that tough mandatory sentencing laws not only don't work, they are often unjust. All those tough laws only crowd our prisons to the breaking point.

"I saw a lot of bad kids in Memphis—juveniles commit one-third of the serious crime—but I saw enough to realize that punishing kids by putting them in adult prisons doesn't work. A lot of bad kids can be helped.

"It's so easy to get frustrated after you see so many crime cure-alls that don't work. But if you look carefully, you'll see the crime problem is certainly not a hopeless problem.

"I'd always thought that plea bargaining was a sordid method of allowing the criminals to beat the system; a judge in Houston showed me that although it is an imperfect compromise, it does work to insure that most serious criminals get what's coming to them.

"In fact, though it's overburdened and terribly underfunded, our criminal justice system works pretty well, and there are signs of change, hopeful change. In Chicago and elsewhere, the cops are starting to get back on the beat and help the citizens help themselves fight crime. In Washington and Detroit and elsewhere, the citizens are starting local crime watch programs, do-it-yourself crime fighting.

"A nice little old lady in Washington, a robbery victim, was a reminder that Black Americans are twice as jeopardized by crime as Whites.

"All over the country they are beginning to pay attention to crime victims, 'Victim rights' it's called, because victims are demanding it.

"Crime is one of those problems that won't be solved by declaring war on it or by throwing money at it. Our justice system could certainly use some more money, but mostly what it seems to need is some elbow grease from all of us. Our streets are only going to be as safe as each of us wants to try and make them.

"After you've spent six months making acquaintance with crime in America, you find you're not quite as afraid of it. It turns out most of us are more afraid of it than we need to be, and you return a little more educated. In this case, at least, a little knowledge is not a dangerous thing."

### *For Discussion*

1. After studying the issues, has your opinion about America's crime problem and the criminal justice system changed? If so, how?
2. Reread "The President's New Crime Package" and "One Reporter's Opinion." Which approach do you favor? Why?
3. *One Reporter's Opinion:* Imagine that you are a reporter who has just finished an investigation on crime and criminal justice in America. Write a concluding statement for the final broadcast. (You can use Mr. Threlkeld's as a model, but use your own ideas, opinions and reasons.)

Prepare a presentation for the class. (If video equipment is available, you may want to tape some of these in your own classroom "studio" and play them for other classes.)

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Courtesy of Mr. Tom Goodman, American Broadcasting Company, New York, 1983.

# Answers

## Chapter 1

**Ingredients Activity**

Case #1:

Each of the basic elements for assault and battery are accounted for.

Case #2:

Placing the poison in the bottle under circumstances likely to cause death satisfies the act, intent and concurrence requirements. That the result was delayed for a month does not matter.

Case #3:

At the very least, *criminal negligence* is shown, thus satisfying the intent requirement. All other elements are present.

Case #4:

All elements are accounted for.

Case #5:

This case raises an issue about causation. There was an intervening act (malpractice or negligence) that was the actual cause of death. Gayle probably could not be convicted of murder.

**Murder Most Foul**

1. *Murder:* Based on the stated facts, Adam probably would not be charged with murder. There is no *actual intent* or *implied intent* to kill, because the gun went off "accidentally." Therefore, *malice aforethought* is not established. However, Adam may be guilty of *felony murder* in that by attempting to kill Rick (a felony) he killed another. This would lead to a charge of second degree murder in many states.

   *Voluntary Manslaughter:* A charge of this crime is unlikely because Adam had sufficient time to "cool off" even after he was seriously provoked by Rick.

   *Involuntary Manslaughter:* All of the elements are present. Rick was clearly engaged in an *unlawful act* by carrying a loaded gun on school premises and by doing so, he was *criminally negligent.* A killing resulting from such circumstances would constitute involuntary manslaughter.

**Defenses to Crime**

1. *M'Naugten:* No. There is no evidence that Mark did not understand the quality of the act or was unable to distinguish right from wrong.

   *Irresistible Impulse:* Yes. The facts indicate that Mark was acting under an "insane impulse" and couldn't control himself.

   *Durham:* Yes, if it could be shown that Mark's act was the product of a "mental disease or defect."

   *Modern Penal Code:* Possibly, if it could be shown that there was a *mental defect* and that it robbed Mark of the capacity to control his conduct.

4. a. *Self Defense:* Not valid, because the force used was not reasonable.
   b. *Entrapment:* Valid, because the officer clearly put the idea in Martha's head.
   c. *Self Defense:* Arguable validity. The issue depends on whether or not Karen's belief about the salesperson was reasonable under the circumstances. That her belief was wrong is not crucial.

## Chapter 2

**Search and/or Seizure**

2. a. Yes. Even off duty, Mark is still an agent of the government. Making an arrest is a seizure.
   b. No. Lois, though an employee of the government, did not search or seize because such items were clearly abandoned.
   c. No. Sanchez had every right to be on the hill and saw the stolen cars in plain view.
   d. Yes. George has a reasonable expectation of privacy in his person.
   e. No. The police did not exercise sufficient "custody" or "control" to constitute an arrest.

**Decision:**

The Supreme Court rejected the defense argument in *Fare v. Michael C.*, 439 U.S. 925 (1979), holding that a lawyer has a unique ability to protect a suspect's rights. A request for someone else is not the same. The Court explained that a lawyer understands the criminal process and has the official status to object to wrongful police actions. He or she is the only one who can be summoned and have the effect of stopping police interrogation. Otherwise, a suspect like Michael could ask for his coach, his music teacher or his priest, and still not receive the legal protections that made the *Miranda* rule necessary. The result for Michael was that his incriminating statements could be used against him.

## Chapter 3

**State Code**

5. a. Murder in the first degree [274(1)]: The long term poisoning shows clear evidence of premeditation.
   b. Murder in the second degree [274(2): Malice aforethought is established by the intent to do an act with obvious risk of death or great bodily injury. This has been called an act with "an abandoned and malignant heart."
   c. Voluntary Manslaughter [298(1)]: The killing was intentional but malice aforethought was not present because Mary was provoked and acted in uncontrolled anger.
   d. Involuntary Manslaughter [298(2)(a)]: The killing was unintentional and, though probably not illegal, was done with great negligence.
   second degree murder by arguing malice aforethought was established by the intent to act with a obvious risk of death or great bodily injury. The difference is one of degree.
   e. Involuntary Manslaughter [298(2)(b)]: The killing was unintentional and, though probably not illegal, was done with great negligence.

**Direct or Circumstantial**

1. a. Direct
   b. Circumstantial
   c. Circumstantial
   d. Direct
   e. Circumstantial

### Objection

a. Yes. Opinion.
b. Yes. Hearsay.
c. Yes. Irrelevant.
d. Yes. Hearsay.
e. No. It is proper to ask a leading question on cross examination.
f. Yes. The witness has a lack of personal knowledge.
g. Yes. The witness has a lack of personal knowledge as to whether the truck was there or not.
h. Yes. Irrelevant.
i. No. Although it is hearsay, the statement is probably admissable as an admission against interest.
j. No.
k. Yes. Leading question.
l. Yes. Opinion, but because of Joel Washington's knowledge about guns, he may be qualified as an expert.

## Chapter 5

### The Court's Decisions

1. *In the Matter of Samuel Winship* (decided March, 1970). A five-member majority ruled in Winship's favor. A sixth justice concurred with the judgment, since requiring reasonable doubt standards would not jeopardize the aims of juvenile justice, but felt there was not necessarily any relationship between the due process requirement of criminal and juvenile proceedings. The remaining three justices dissented because the Constitution doesn't specify the reasonable doubt standard; juvenile justice systems need flexibility; and, barring a direct violation of due process, the issue should be left to individual state legislatures.

   *In Re Barbara Burrus, et. al.* (decided June, 1971). By a vote of 5–4, the Court declared that, as long as juvenile proceedings were fundamentally fair, neither trials by jury nor public trials in juvenile proceedings were necessary. One dissenting justice felt that, though jury trials weren't mandated, public proceedings were needed in order to protect the juvenile from misuse of judicial power. The remaining three justices thought the Constitution protected juveniles' right to trial by jury when charged with offenses which would be triable by jury if the offender was an adult.

   *McKeiver v. Pennsylvania* (decided June, 1971). A six-member majority agreed that the due process clause of the 14th Amendment did not require juvenile jury trials. (The justice who had dissented in *Burrus* because North Carolina didn't allow a public hearing reversed himself in this case, since Pennsylvania's laws did let detained juveniles request public hearings.) The justices who dissented in *Burrus* based their repeat performance on the same reasoning.

## Chapter 6

### "Quizbowl"

3.
   1. Article I, Section 9: Forbids illegal detention, bills of attainder (laws pronouncing specific people guilty of crimes), or ex post facto laws (laws making acts guilty after they've been committed).
   2. Article II, Section 3: Defines the President's responsibility to "take care that the laws be faithfully executed."
   3. Article III, Section 2: Defines responsibility of federal judiciary to resolve certain criminal controversies. Mandates trial by jury and trial in the state where the crime was committed.
   4. Article I, Section 8: Gives Congress power to punish counterfeiting; establish tribunals inferior to the Supreme Court; punish piracies, felonies committed on the high seas and crimes against the law of nations; and to legislate, as necessary, to execute the government's prescribed power.
   5. Amendment 4: Forbids unreasonable searches and seizures and allows for warrants only upon probable cause.
   6. Amendment 5: Mandates indictment by Grand Jury, and forbids double jeopardy, self-incrimination, and punishment without due process.
   7. Amendment 6: Guarantees speedy and public trial, impartial jury of peers, cross examination of witnesses, assistance of counsel, ability to subpoena witnesses and right to be informed of charges and evidence.
   8. Amendment 8: Forbids excessive bail and fines, and cruel or unusual punishments.

SPECIAL BONUS: Treason

### Citizen Taskforce

1. crime
2. Community working together; using federal money (108F program) to pay for program to control crime.
3. On a Victim Assistance Program (medical expenses, funeral expenses, psychological counseling for crime victims).

   As students, discuss whether or not they agree with this. Be sure they raise the following three points:

   - It's a good idea because crime victims need the practical help (especially the low income people who are hardest hit, but least likely to be insured). Not helping them only compounds the unfairness and injustice.
   - It's a good idea because it shows the community's stand in favor of the victims and against the criminals. (It's good public relations and will develop good community feeling.)
   - It's a waste of money because it doesn't do anything to stop the crime. Why should society pay for criminal acts? It would be better to spend the money catching the criminals and preventing the crimes from occurring.